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SHERNANNA, HESHAM,FARHAT

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**CRITICAL PERSPECTIVES ON THE EFFICIENT
IMPLEMENTATION OF PRIVATISATION POLICIES IN
LIBYA: ASSESSING FINANCIAL, ECONOMIC, LEGAL,
ADMINISTRATIVE AND SOCIAL REQUIREMENTS**

By Hesham Farhat Saleh Shernanna

**A Thesis Submitted in Fulfilment of the Requirements for the Degree
of Doctor of Philosophy (PhD) at Durham University**

School of Government and International Affairs

Durham University

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Critical Perspectives on the Efficient Implementation of Privatisation Policies in Libya: Assessing Financial, Economic, Legal, Administrative and Social Requirements

By Hesham F. Shernanna

Abstract

Since the 1980s, due to the disappointing performance of public sector enterprises and state economies, privatisation has been considered an essential policy tool for economic transformation by privatising state-owned enterprises (SOEs) and restructuring the economy for the private sector and private investors to participate more extensively in economic activities.

Privatisation, however, as past experiences have proved, is not a simple issue, nor is it the same in all countries. Although in many industrialised and developing countries privatisation has achieved many positive results, in other developing and transitional countries the consequences of the experiment have been unsatisfactory. Worldwide experience has proved that there are several financial, economic, legal, administrative and social requirements that must be fulfilled in order to attain success and achieve the desired objectives of privatisation and economic transformation policies in an efficient and effective manner.

This study, therefore, aims to explore the availability of these conditions in Libya by evaluating the adequacy and effectiveness of the Libyan financial, economic, administrative and legal environment for the efficient implementation of the privatisation programme. The main focus is on the financial and economic requirements; including restructuring the financial sector such as establishing the stock exchange market, reforming the banking sector, in addition to liberalizing the market, reforming exchange rate policies. In addition, it aims to assess the effectiveness of the policies and actions taken by the former Libyan government to support and regulate the privatisation process, as well as to assess policies addressing the potential social impacts of privatisation, such as redundancy and effects on consumer welfare. Moreover, this study aims to evaluate the legal environment and its appropriateness for implementation of the privatisation policy, promotion of private investors' participation, and regulation of the market economy.

The research methods used in this study are mainly based on qualitative techniques, and data were collected by two modes of data collection. The first is the collection of secondary data from documents including financial, economic and administrative reports, and laws and resolutions related to the topic in question. In addition, content analysis is used to analyse laws in order to examine the adequacy of the legal environment for successful privatisation and the transformation to a market economy. An attempt is also made to use statistical data in the form of secondary data to illustrate the developments and trends in privatisation policies and the impact of such policies. The second method of data collection used in this study is structured interviews, which targeted a variety of specialists and stakeholders of the privatisation process and economic policies in Libya.

Findings of the study reveal that decision-makers in the former regime did not show a clear desire and sufficient support for privatisation and the transformation to a market economy. In addition, findings show that many regulative and administrative difficulties prevented the transparent implementation of privatisation in Libya. Furthermore, findings obtained from document analysis and the interviews prove that, although many positive procedures were implemented and new institutions created by the governments of the former regime, including attempts to reform the banking sector, liberalise the market and establish a stock market, *etc.*, many difficulties and challenges are still facing the new Libyan government in developing a proper financial and economic environment for privatisation and economic reform policies and also establishing an efficient market economy. Similarly, with regard to social aspects, findings of the study demonstrate that the former Libyan government paid explicit attention to some potentially negative social impacts of privatisation. However, there are still some shortcomings, especially with regard to the redundancy problem and consumer protection issues. With regard to the legal environment, the former government issued several important laws and legislations for privatisation, and to encourage private sector investment. However, the findings demonstrate that these measures were and still are insufficient, as there have been many inappropriate constitutional provisions, in addition to non-activation of several new essential laws.

This study, therefore, demonstrates that, although many positive procedures were implemented by the former Libyan government, many difficulties and challenges are still facing the government of the new regime to achieve the desired objectives of the privatisation programme and transformation to the market economy. The success of future governments will also be heavily dependent on their performance in creating an efficient market economy.

DECLARATION

I hereby declare that no portion of this thesis has previously been submitted for a degree or diploma at Durham University or at any other university or institution of learning. To the best of my knowledge, the material contained in this thesis has not previously been published, or written by others, except where due reference is made in the thesis.

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CHAPTER 1

INTRODUCTION

1.1 THE STATEMENT OF THE PROBLEM

From an economic perspective the expansion of the public sector in Libya during the 1970s was motivated by a number of factors. Most importantly, poverty was rampant and there were wide variations in income among individuals prior to the 1970s. In addition, as far as the state was concerned, the infrastructure and manpower capacity were inadequate, and both needed direct investment from the non-profit sector. It is important to note that the chosen political economy of the time, i.e. socialism, in responding to the underdevelopment of the country, should be considered as an important motivational factor for the expansion of the public sector in Libya. During the quest for development, the sudden increases in public funds as a result of the sharp increases in crude oil prices, which in turn resulted in increases in foreign currency reserves, provided the financial rationale for the expansion of the state economy to initiate a 'state-led economic development' policy. This is quite clear from the subsequent increases in the funding of public investment from the late 1970s onward.

As a result of all these factors, the state became a major investor in the production of goods and an important service provider. For example, the public sector contributed 86.6% of the total investment allocated by the five-year socio-economic transformation plan during the period of 1976-1980; thus, the private sector investments, both local and foreign, contributed less than 13.4 % (General People's Committee for Planning, 1989).

Experience showed that all these factors had collectively achieved positive results, in particular the improvement in the performance of the state economy during the 1970s. Eventually, the non-oil GNP increased by rates reaching 9% and 13% in 1979 and 1980 respectively (Gailani, 1999: 53). Moreover, huge infrastructure projects were executed by the public sector including construction of roads and power stations, extension of networks, and the linking of different regions of the country through an efficient telecommunications network, airports, seaports, etc. It should be noted that, during that period, it was not possible for the private sector to execute or finance such

projects or to establish a reliable national manufacturing base including factories and other production and service institutions, which had played a major role in the improvement of income for individuals (Shernanna and Elfergani, 2007).

On the other hand, the control of economic activities by the public sector had a number of disadvantages. These included, among others, the increasing dependence on the oil sector as a main funder of the economic development programmes, the complete reliance on imported items for running investment projects given the limited funds allocated for that purpose, the poor productivity of the public sector projects, and the failure of these projects to expand and develop. As a result of all that, the public sector became the main source of economic activity and the general budget constituted the major source for its projects given the fact that the oil revenues, which are greatly affected by international economic variables, constitute the main source of income for the general budget (Tapoli, 2004; Fatory, 2004).

In the mid-1980s, in order to tackle the economic problems resulting from the dominance of the public sector over economic activities, the government decided to undertake gradual steps to encourage the private sector to invest and contribute in the economic life. Consequently, Law No. 9 of 1985 came into existence governing the organisation of cooperatives; this allowed individuals to engage in business in the areas of industrial and agricultural production.

A few years later, however, following the General People's Committee resolution No. 427 of 1989, addressing the implementation of collective ownership in relation to the public sector projects, the government of Libya began its privatisation scheme, with the transfer of investment projects from the public sector to collective ownership in the form of cooperatives. Accordingly, more than 4,845 production units were transferred into collective ownership. The plan mainly targeted production sectors, which had been broken down into the smallest possible production units to be transformed into cooperatives owned by the workforce. The total cost of these cooperatives was estimated at LD 167.8 million distributed among 145 industrial production units, 45 animal production units, 219 maritime production units, and 4436 agricultural production units (General People's Committee Resolution No. 427 of 1989). However, over time it has become evident that this process of collective

ownership has been unsuccessful; most of the cooperatives have failed to pay their instalments, as the total amount paid was only LD 43.2 million. Even worse than that, due to shortages in raw materials, which are sometimes not imported in a timely manner, production in most of the units is either very poor or has ceased altogether. In addition, the manipulation of budgets associated with the import of production requirements has remained an important issue. Furthermore, these production units have lacked technically qualified and trained staff in the area of management and finance, which has made the efficient running of these units extremely difficult (Shernanna and Elfergani, 2006).

The privatisation programme was initiated following the enactment of Law No. 9 of 1992, which paved the way for the private sector investors to take part in the economic process. According to this Law, five groups could take part in economic activities, namely individuals, families, cooperatives, stock companies, and public sector organisations. On the other hand, Law No. 1 of 1993 was issued in relation to banks, cash and credit, and for the first time allowed the establishment of cooperative banks. It was followed by the General People's Committee (Prime Ministry) resolutions No 300 and 431 of 1993 which regulated the ownership of public sector organisations and the involvement of the private sector in commercial activities respectively (Shukri, 2006).

Due to the disappointing results of the privatisation programme after 1994, events moved very slowly almost to the point of stagnation until the General People's Committee issued its resolution No. 198 of 2001, initiating the establishment of the Privatisation Agency. Yet, in accordance with the General People's Committee No. 313 of 2003 regarding the restructuring of public sector companies, 360 large and medium-sized companies came under direct control of the above-mentioned agency. From the beginning of 2004, the Privatisation Agency started to privatise these companies. Data available in the reports of the Privatisation Agency indicate that 115 companies have been privatised through various methods of privatisation (Privatisation Agency, 2010). Furthermore, about 160 State-Owned Enterprises (SOEs) have been transferred to several ministries charged with taking appropriate decisions on their behalf (Shernanna and Elfergani, 2006). However, by the end of

2010, 20 large companies remained in the evaluation stage (Privatisation Agency, 2010), which was still the case at the end of 2011.

As Kikeri and Nilles (2002) suggest, currently it is not easy to find a state that has not become involved in a program to divest itself of some or all of its SOEs or to encourage the private sector to engage in the management, ownership and operation of these enterprises. This approach also shaped the economic worldview of Libyan government circles, as a privatisation policy has been applied on a large scale to address the problems of the public sector.

As past experiences have shown, the privatisation process is not an easy matter, nor is it the same in all countries. According to empirical studies, in many industrialised and developing countries privatisation has achieved many positive results such as increasing the profitability of enterprises, improving the quality of products, reducing the budget deficit, and developing domestic financial markets. In many developing countries and transitional countries, however, the results of the experiment have been ambiguous, thus raising doubts about the effectiveness of the privatisation policy (Parker and Kirkpatrick, 2005). Therefore, serious problems may be experienced unless a comprehensive and strategic plan is considered, incorporating all the requirements and conditions that must exist prior to carrying out privatisation. Despite the lack of a uniform model for the application of a privatisation policy, worldwide experience has proved that there are several financial, economic, managerial and legal requirements that should be fulfilled to achieve the desired objectives of privatisation and economic transformation policies (see, for example, Desha, 1991; Kikeri *et al*, 1997; Kikeri and Nellis, 2002; Parker and Kirkpatrick, 2005; Nellis, 2007). Libya is no exception; thus, to achieve the desired goals and avoid the negative effects of privatisation, these conditions and requirements should be taken into account by the government before or even during the implementation of the privatisation program.

The recent changes that have taken place in Libya have consequences for economic policy-making as well. It is not yet known what particular strategies have been drawn up by the Transitional Government in developing its economic policies, including privatisation. It should be noted that it has expressed its commitment to an 'open' and 'market-based' economy.

After this brief introduction, the following sections will identify particular aspects of the operational nature of the research.

1.2 THE AIM AND OBJECTIVES OF THE STUDY

This study aims to explore and critically evaluate the adequacy and effectiveness of the financial, economic, legal, administrative and social environment for the efficient implementation of privatisation program in Libya.

In fulfilling this aim, the following objectives are developed:

- to identify the requirements for the successful implementation of privatisation in developing countries;
- to study the nature of the Libyan economy and the rationale for pursuing a privatisation policy;
- to investigate whether the Libyan Government has been sufficiently committed to the privatisation policy;
- to explore the adequacy of the Libyan financial, economic, legal, administrative and social environment for the efficient implementation of privatisation;
- to explore the financial, economic and legal environment-related difficulties that could be a barrier to the efficient implementation of privatisation;
- to explore the institutional initiatives taken by the government to overcome the adverse social consequences of privatisation in Libya;
- to conduct interviews with various stakeholders in post-revolution Libya to identify the potential policies of the new regime for privatisation;
- to develop a set of recommendations that would reduce the likelihood of the failure of the privatisation process in Libya.

1.3 THE RESEARCH QUESTIONS

This study aims to answer a series of questions within the given aims and objectives; they have been formulated in clusters as follows:

Question Cluster One:

- What is the rationale for privatisation?
- What are the efficient and effective conditions for privatisation, especially in developing and transitional economies?

Question Cluster Two:

- What are the main characteristics of the Libyan economy?
- What is the rationale for the heavy presence of the public sector in Libya?
- Why was it necessary for the Libyan economy to adopt privatisation policies?

Question Cluster Three:

- To what extent is the Libyan government committed to the privatisation program?
- Is it ready to implement the privatisation program?
- How has it dealt with structural issues related to privatisation such as financial, economic, legal, administrative and social issues that may cause the failure of the process?
- What institutional changes has Libya introduced in order to fulfil the requirements for a successful implementation programme?

Question Cluster Four:

- What are the major problems of implementing privatisation in Libya?

- What are the recommended approaches to deal with each of the implementation problems?

1.4 THE RATIONALE FOR THE STUDY

The rationale for this study stems from the importance of the privatisation process, and the need to address the negative aspects of the public sector dominance in economic activities. Given that past experience has proved that there are necessary conditions for the success of privatisation, this study is important at this stage to explore and evaluate the adequacy of the financial, economic, legal and administrative environment, especially as Libya is still in the implementation phase of privatisation. The results of studies such as this may play a positive role in the success of the transition process.

It should also be noted that the researcher is a staff member of the Faculty of Economics and Political Science at Tripoli University, where he has given many lectures on issues related to privatisation programs, thus helping to develop an authentic understanding of Libya's privatisation issues and their complexities. Another motivation for selecting this subject is that privatisation programmes have been a main concern of the researcher for many years in terms of their outcomes. In addition, the selection of this issue for a PhD study will enhance the author's knowledge and expertise in this area.

1.5 RESEARCH METHODOLOGY

The research methods used in this study are mainly based on qualitative techniques, and consist of two modes of data collection. The first is the collection of secondary data from documents including financial, economics, administrative reports, and laws and resolutions related to the topic in question. Document analysis was used in this study to investigate the arrangements and policies that have been adopted by the government to meet the financial, economic conditions and requirements for the successful implementation of privatisation. Moreover, content analysis is used to investigate laws in order to examine the adequacy of the legal environment for successful privatisation and the transformation to a market economy. An attempt is also made to use statistical data in the form of secondary data to illustrate the developments and trends in privatisation policies and the impact of such policies.

The second method of data collection was structured interviews, which targeted a variety of specialists and stakeholders in the privatisation process and economic policies in Libya. The interview population comprised 14 individuals, five of whom were academics specialising in economics, banking and finance who work for different educational institutions in Libya. Secondly, senior officials in the financial and banking sectors and in government agencies related to privatization in Libya were interviewed. To discover the perceptions of the private sector, two bankers working in the Libyan banking sector were interviewed. Importantly, four senior staff of the Privatisation Agency, and three senior officials of the Libyan capital market, including the general manager of the Libyan Stock Market, were interviewed. Since the sample was small, the data were analysed manually using a coding analysis technique.

1.6 DELIMITATION OF THE RESEARCH

The research has geographical as well as time limits which can be defined as follows: firstly, from a geographical perspective, the research arena is confined to Libya which occupies an area of 1,775,060 square kilometres, located in the Northern part of the African continent. Libya extends from the Mediterranean coast in the north to the borders of the Republics of Chad and Niger in the south, and from the borders of Egypt and the Sudan in the east to the borders of Tunisia and Algeria in the west (National Corporation for Information, 2002).

It should be noted that this research covers the period marking the beginning of the privatisation programme in 1985 until 2010. It is worth mentioning that the choice of this period of time has been dictated by practical considerations rather than any other predetermined considerations. To be more specific, these considerations include the beginning of the implementation of the privatisation program in Libya, which can be traced back to the 1980s.

1.7 ORGANISATION OF THE STUDY

Chapter Two of this research discusses the literature review on privatisation and related issues, starting with the public sector economy and the failure of the public enterprises. Then it discusses privatisation policy as reforming policy, including the concept, objectives, theories, and methods of privatisation.

The main requirements for successful privatisation, especially in developing and transitional countries, are discussed in detail in Chapter Three of this study, mainly focusing on the financial, economic, administrative, and legal requirements.

Chapter Four discusses the Libyan economy and privatisation program in Libya including background on the Libyan economy, reasons behind the dominance of public sector enterprises in financial and economic activities, the role of these enterprises, the rationale for privatisation, and the privatisation program in Libya.

Chapter Five aims to assess the Libyan government's commitment to develop appropriate solutions for the potential negative social impacts of privatisation such as redundancy and the impacts on consumer welfare in the Libyan market.

Chapter Six aims to assess the adequacy of the financial and economic environment for privatisation in Libya. These include procedures and policies that have been adopted by the Libyan government to create a competitive environment appropriate for a market economy, both in terms of foreign competition through liberalisation of the market (exports and imports) and exchange rate, and all policies that stimulate internal competition, such as promoting local investment, facilitating the procedures for obtaining licenses to ensure an effective private sector participation in economic life, reforming the banking sector, establishing a market for securities, and other related fiscal and monetary policies.

Chapter Seven discusses the adequacy and effectiveness of the legal environment for the efficient implementation of the privatisation program in Libya. Thus, this chapter presents legal changes that were introduced in order to fulfil the requirements of a successful privatisation and transition to a market economy in Libya.

Chapter Eight explores and analyses the process of privatisation and the transition to a market economy in Libya through the views of Libyan specialists and stakeholders in this area by presenting the interview analysis.

Chapter Nine discusses the findings of this research in an interpretative and integrative manner with the objective of providing answers to the questions of the study by using a hypothesis-testing structure.

Chapter Ten presents the conclusion based on the outcomes and findings of the research, in addition to the recommendations of the study.

CHAPTER 2

PRIVATISATION: A LITERATURE SURVEY

2.1 INTRODUCTION

In many countries, during the middle decades of the twentieth century, governments expanded their role in the economy for various reasons and founded numerous state-owned enterprises (SOEs) that dominated economic activities (Parker and Kirkpatrick, 2003; Hajj, 2007; Tanzi, 1997). In the early stages, SOEs or public sector enterprises succeeded in promoting growth and economic development in many countries, be they developing or developed countries (World Bank, 1997). However, in the 1980s negative performance by these enterprises became apparent, as did the inability of the public sector to achieve planned financial and output targets (World Bank, 1997; Nellis, 2007). Accordingly, there was an urgent need to implement reform programmes to reduce the negative effects caused by the public sector. Hence, privatisation emerged as one of the most important elements of these reform programmes (Nellis, 2007).

Since the 1980s, privatisation has become a fundamental aspect of structural reform programmes in developed and developing economies alike. In fact, currently it is not easy to find a state that is not involved in a programme to divest itself of some or all of its SOEs or to engage the private sector in the management, ownership, and operation of these enterprises (Kikeri and Nellis, 2002; Parker and Kirkpatrick, 2005; Nellis, 2007). There are several reasons for the adoption of the policy of privatising SOEs, as well as opening the door for the private sector and private investors to participate more extensively in economic activities. In general, experience has shown that SOEs performed, and continue to perform, inefficiently with low-quality and high-cost production processes (Abu Shair, 1997). In addition, they became seriously overstaffed, especially in developing countries, due mainly to political patronage at the expense of efficiency (World Bank, 1997; Tanzi, 1997; Bala, 2006). Furthermore, SOEs were protected from competition as they were operated with particular policies put in place by governments, for example pricing policies pursued by governments to achieve distributional objectives rather than economic goals. This led to extensive losses by SOEs; consequently budget deficits also caused considerable problems for

the banking systems in many developing countries (Gupta, 2005; Megginson and Netter, 2001; Brehm and Gates, 1999; Clark *et al*, 2005). To cover the losses of state enterprises, governments were compelled to adopt various financial policies such as raising taxes, and often resorted to reducing public expenditure in other areas that may have been more important. The necessity for public banks to address the financial problems of SOEs increased intermediation costs, reduced the ability of the private sector investors to obtain financing from the banking system, and generally threatened the capability of the financial sector (Kikeri and Nellis, 2002).

It should be noted that there were several efforts during the 1970s and 1980s to improve SOEs' performance through various policies such as imposing hard budget constraints, exposing SOEs to competition, and making some institutional changes. Although some attempts had shown positive results at the beginning of implementation, the accomplishments proved unsustainable and back-sliding was widespread. As a result, at the end of the 1980s state ownership was considered the chief cause of the failure of these enterprises as well as the weak results of the reform attempts. In addition, the perception emerged that the state ownership and management of productive enterprises had been oversold, and that the possible role of the private sector had been undervalued. For these reasons, privatisation programmes were pursued in the UK and other countries in the 1980s, a trend that later became widespread around the world. As a result, many countries and international institutions proposed privatisation as a tool to improve the performance and efficiency of public enterprises (World Bank, 1995; Majumdar, 1998; Shirley and Xu, 2001; Kikeri and Nellis, 2002).

In an attempt to provide a survey, this chapter firstly presents the public sector economy and the impact of public enterprises on the economy. Secondly, it sheds light on the concept of privatisation and the objectives of privatisation. Thirdly, this chapter discusses the most significant theories supporting privatisation and private ownership.

2.2 THE IMPACT OF PUBLIC SECTOR ENTERPRISES ON THE ECONOMY

As mentioned above, SOEs were established in many developed countries in the post-Second World War period and in developing countries after their independence with the objective of achieving economic development. Although many positive results were achieved, especially in the early stages of the dominance of the public sector, by the 1980s the disadvantages of SOEs began to appear in various forms including increased fiscal deficits in government budgets (Walle, 1989; World Bank, 1997; Tanzi, 1997; Faresi, 2004; Belke & Schneider, 2004; Shernanna & Alfergany, 2005; Bala, 2006; Ali, 2007).

In general, the public sector in many countries had a number of advantages including the following: achieving high rates of economic welfare; achieving social objectives; establishing infrastructure; and creating an environment conducive to growth and economic development (Ali, 2007:83). Moreover, Faresi (2004:3) suggests that the SOEs contributed to achieving various social goals: achieving equity of income distribution; increasing the rate of employment; improving living standards through state-owned enterprises and economic policies such as subsidies, tax exemptions and price controls.

In looking at the history of SOEs within public finances, Tanzi (1997) argues that the 1950s and 1960s were the golden era for the public sector, particularly in relation to the subject of social development, as SOEs contributed to the achievement of unprecedented rates of economic growth of 5% per annum between 1984 and 1973 (Abdel Nour, 1999).

However, a couple of decades later, several factors such as political intervention, the difficulty of control, and the lack of competition in the public sector resulted in disappointing outcomes from the dominance of the state and SOEs in the economy (Gelb *et al.*, 1991; Buchanan & Tollison, 1972; Niskanen, 1975; Berham and Gates, 1999; World Bank, 1995; Prager, 1992; Faresi, 2004; Clark *et al.*, 2005). In this context, Bala (2006) indicates that the 1980s witnessed a significant increase in studies on the performance and efficiency of state-owned enterprises as, by the 1980s, many governments found themselves grappling with increasing fiscal deficits and an

inability to provide the necessary funds to finance their public sector enterprises. Furthermore, Belke and Schneider (2004), World Bank (1988), Adelman (1999), Bala (2006), Tanzi (1997) and Al Kafri (2005) all argue that, as a result of public sector enterprises' dominance in the economy, many financial problems and economic imbalances emerged, such as economic inefficiency, budget deficits, the accumulation of external debt, a reduction in the rates of economic growth and investment rates, high inflation and a deterioration in living standards.

In addition, Al Kafri (2005) indicates that, by the 1980s, the dominance of SOEs in the economy put significant pressure on the private sector in many countries, which resulted in its marginalisation. The paucity of private sector participation in the economy adversely affected economic efficiency as well as growth and economic development (Al Kafri, 2005). In supporting this, Tanzi (1997) points out that the idea of relying on SOEs to solve most economic problems became less acceptable because the performance of SOEs in delivering productivity was disappointing.

The problems of inefficiency and poor financial and administrative performance by these enterprises resulted in increasing levels of economic inefficiency in resource allocation, consequently impacting negatively on both the growth and economic development in many countries, particularly developing ones. Vagliasindi (2008) states that the poor performance caused heavy financial losses for SOEs. He points out that these losses adversely affected the budgets of these enterprises, thus causing a rise in the fiscal deficit of the state budget. Additionally, he explains that the policy of support and protection, which was adopted by governments to support loss-making enterprises, caused an accumulation of public debt, a significant rise in interest rates and low volumes of total investment. Therefore, these losses caused a deviation from the economic and social objectives assigned to these enterprises. In practice, Walle (1989) and Belke and Schneider (2004) mention that the indicators of public sector failure appeared in most countries around the world. They argue that, by the late 1980s, thousands of large SOEs in developing and developed countries were recording low rates of performance.

In this context, the World Bank indicates that the financial and economic problems were exacerbated in many countries by the lack of appropriate financial information

on the public sector performance (World Bank, 1988). According to Abu Shair (1997), empirical studies proved that a large number of SOEs incurred significant financial losses, which impacted heavily on the budgets of many countries. For example, during the late 1980s and early 1990s, the financial losses of SOEs in Argentina amounted to 9% of GDP. Similarly, in Yugoslavia, the losses amounted to 8% of GDP, and in a number of African countries these were not less than 5% of GDP. Additionally, Prager (1990) indicates that the majority of empirical studies show that SOEs were racking up bigger losses than profits. He also believes that, although the losses attributed to state companies in industrial countries were lower than in developing countries, in general losses are a characteristic of SOEs.

It seems clear therefore that, in the early decades of public sector dominance, state enterprises played an important role in promoting economic growth, social development and the provision of basic requirements for economic development in many countries. However, after this golden period, the problems of poor performance and low efficiency appeared. The losses of state companies became a significant burden on the public budget, as well as causing other financial and economic imbalances such as the accumulation of public debt. Eventually this resulted in an external debt crisis in many developing countries, as well as low economic efficiency in the allocation of resources and low rates of growth and economic development.

Consequently, by the 1980s, when the problem became highly visible, there were increasing calls for the adoption of reform programmes, including privatisation policies, in order to eliminate the distortions created by the public sector involvement. In this, the neo-liberal reforms suggested by the Washington Consensus of 1979 played an important role, and it became possible to sell this prescription under the banner of economic liberalisation and reform to many countries in the world.

After this initial background information, the next section discusses the privatisation policy in detail, beginning with the concept and objectives of this policy, and the theoretical framework of privatisation.

2.3 PRIVATISATION: CONCEPTUAL DEFINITION

In the literature, the concept of privatisation is multi-dimensional, and there is no uniform definition of a privatisation policy. Abdussalam (2006) indicates that the term 'privatisation' has been used to express a range of economic and social policies in developing and developed countries alike. In this context, Savas (2001) also believes that privatisation is an economic phenomenon that has been adopted around the world, and in most countries, be they Western or Eastern, developed or developing, and capitalist, socialist or communist. Abdussalam (2006) thus suggests that the widespread adoption of this policy could explain the lack of a uniform definition of privatisation, as it may have different meanings for different people in different countries.

Although privatisation has several different definitions, in general they can be categorised according to two concepts, namely the broad concept and the narrow concept of privatisation. In the broad definition, Wiezsacker *et al.* (2005) indicate that privatisation refers to all programmes designed to enhance the role of the private sector in using and investing the resources of society and producing goods and services by decreasing or restricting the role of governments and the public sector enterprises in such affairs. Moreover, Savas (2001) broadly defines privatisation as relying more on investments and management of the private sector and less on the state to satisfy the needs of the people. He also defines privatisation as the procedure of reducing the role of the state, or increasing the role of the private sector, whether in terms of activities or assets ownership. Furthermore, Rose (2006) defines privatisation as efforts by the government to transfer assets and economic decision-making from the state and the political field to the hands of individuals or the private sector investors.

In the narrow concept, privatisation could be defined as a shift of ownership of public enterprises from the state to private investors. Savas (2001) indicates that, in its most constrained definition, privatisation means the process of transferring SOEs or public assets to the private sector. In addition, Hemming and Mansoor (1992) indicate that privatisation refers to the practice of the transfer of ownership and/or control of productive assets from the public to the private sector.

However, many authors such as Savas (2001) suggest that the narrow definition of privatisation is too limited to encompass all the changes occurring in countries that experience strong state control and dominance over most or all economic activities. It seems clear, accordingly, that the narrow definition of privatisation may suit some countries which adopt the capitalist system; however, in transition countries, the former socialist and communist countries, privatisation means a shift from a planned economy depending primarily on the state to a market economy where the private sector and the private investors play a major role in economic life.

2.4 PRIVATISATION OBJECTIVES

Objectives that governments seek to achieve through the adoption of privatisation programmes vary from state to state, because of the different priorities and circumstances in each country (Praker, 2001). The procedure of setting goals and clarifying their significance is very important for the success of the privatisation process because they influence the choice of the appropriate style and timeline for the privatisation process; hence, each state should determine its priorities and objectives before embarking on the process, to ensure the desired results. Although views may differ about the objectives of privatisation, many economists such as Hastings and Levie (1983), Bishop *et al.* (1994), Wright and Perrotti (2000), Praker (2001), OECD, (2003), Dayoup (2006), Faleh (2008) and Jubouri (2009) believe that privatisation, in general, aims to achieve a number of important financial and economic objectives, which can be summarised as follows:

2.4.1 Improving the Efficiency

Privatisation aims to improve the efficiency of economic resource allocation by raising the efficiency and performance of economic enterprises. Experience confirms that the performance of the public sector has been modest at both the administrative and technical levels; hence, it is unable to provide goods and services of high quality. In addition, this sector suffered significant losses resulting from poor performance, high costs and low revenues (Abu Shair, 1997). Thus, the public sector has become the main cause of many of the financial problems and burdens on the public budgets in many countries, as well as wasting financial resources and human capacities (Brehm & Gates, 1999; Clark *et al.*, 2005). Therefore, the adoption of the privatisation

policy aims to address the inefficiencies in public sector institutions, as supporters of privatisation believe that private enterprises that operate according to market mechanisms and in a competitive environment will reduce production costs and improve the quality of performance, thereby improving economic efficiency (Praker, 2001; OECD, 2003; Dayoup, 2006; Faleh, 2008).

2.4.2 Reducing the Fiscal Deficit of the State

Easing the financial burden on the state budget is one of the main objectives of the privatisation programme. An inefficient public sector and poor financial and administrative performance by its institutions are the major reasons for the emergence of negative consequences and deficits in public budgets, since governments usually adopt a subsidies policy to support the loss-making public enterprises (Gupta, 2005; Megginson and Netter, 2001; Hastings and Levie, 1983). Thus, privatisation and the sale of loss-making enterprises, on the one hand, mean avoiding losses incurred by the general budget. On the other hand, the efficiency and profitability of privatised enterprises will positively affect the public budgets through tax increases resulting from increased profits made by those companies. In addition, positive results can be achieved through increased exports resulting from the improvement in the productive efficiency of privatised enterprises (Wright & Perrotti, 2000).

2.4.3 Expanding the Ownership Base

Promoting wider share ownership among both the general public and former public sector employees is a key aim of the privatisation policy. Adoption of the privatisation programme may be an effective tool in increasing people's ownership of the economic units; this is achieved by selling public sector enterprises to individuals through the method of public subscription. Moreover, in some cases the goal of expanding the ownership base can be achieved by privatising the jobs of workers in these public enterprises (OECD, 2003).

2.4.4 Capital Market Development

The development of domestic capital markets may be one of the main goals of adopting the privatisation programme. The relationship between privatisation and the stock market is a causal one in which the privatisation policy positively affects the

liquidity and depth of the local stock market. On the other hand, the stock market also plays an important role in the success of privatisation, since selling public enterprises through the stock market is one of the best methods of privatisation (Jubouri, 2009).

2.4.5 Attracting Investment

Privatisation of the public sector provides the opportunity for foreign investors to invest in public enterprises; hence, these enterprises will benefit from the advantages that may be provided by foreign investment such as technology, effective management to improve efficiency and productivity, and capital for the development of these institutions. In addition, privatisation aims to motivate domestic investment by stimulating domestic savings and encouraging small local investors to invest and participate in economic activity (OECD, 2003; Faleh, 2008).

The discussion presented so far has identified the difficulties faced in defining privatisation and its various aspects. The following section provides a detailed discussion on the theoretical framework.

2.5 THEORETICAL FRAMEWORK FOR PRIVATISATION

As mentioned above, SOEs had played a major role in economic activity, especially in developing countries, until the 1980s (World Bank, 1997; Shernanna & Alfergany, 2005). Experience, however, has proved that the economic performance of these enterprises was generally disappointing and later became a burden on the state budget because of the heavy subsidies provided by governments to these enterprises (Gupta, 2005; Megginson and Netter, 2001). Many authors, including Buchanan and Tollison (1982), Mueller (1984), Davis (1971) and Yarrow (1997), suggest that the inefficiency of these enterprises could be attributed to the nature of public ownership itself, as stated in many theories such as public choice, property rights and agency theory. On the other hand, others, including Smith and Trebilcock (2001), suggest that, along with problems resulting from public ownership, the lack of competition in the environment of the public sector economy may have been the significant factor in public enterprises' inefficiency. In other words, private enterprises usually operate in a competitive environment which helps them to improve economic efficiency; state-owned enterprises, however, are usually protected from competition, thus negatively affecting their efficiency. Therefore, the theoretical framework will be divided into

two parts: the first highlights the effects of ownership, and the second discusses the effects of competition offered by the market economy on the efficiency of economic enterprises.

2.5.1 The Effects of Ownership

A variety of theories such as public choice, property rights and agency theories suggest that private ownership is more efficient than public ownership, for several reasons. Further details will be addressed in the following sections:

2.5.1.1 Public choice theory

Public choice is the theory of neoclassical political economy, which has applied the main methods of neoclassical economics to political issues (Mueller, 1984; Abu Shair, 1994). Similarly, Agartan (2009) argues that public choice theory is consistent with neoclassical economics regarding the behavioural assumption, which holds that the individual is a rational, utility-maximiser. Public choice theorists including, for example, Buchanan (1984) argue that, with the rationality assumption, there would be no justification for assuming that government intervention in economic life would find solutions to market failure and improve economic efficiency. He explains that politicians are seeking to achieve their personal and political interests with economic resources available to the government. Accordingly, politicians and state bureaucrats are always interested in maximising their own objectives rather than public interests (Buchanan and Tollison, 1982; Buchanan, 1984; Mueller, 1984). In other words, they are more interested in winning votes than improving economic efficiency. Therefore, he recommends taking into account the inability of the government and its failure rather than focusing on traditional claims about market failure. Furthermore, Gupta (2005) indicates that government failure has been apparent in the inefficiency of SOEs. This inefficiency is attributed to the intervention of politicians in the policies of these enterprises, such as pricing policy and employment. In other words, these interventions cause financial losses in public enterprises due to a surplus of workers and subsidised prices. Therefore, public choice theorists believe that utility-maximising politicians may negatively affect the efficiency of SOEs.

Furthermore, Niskanen (1971) asserts that the benefits that may be achieved by utility-maximising bureaucrats are associated with the size of the budgets or

enterprises they manage, as expanded budgets may offer them better jobs and higher salaries. Therefore, this motivates bureaucrats to increase the size of enterprises rather than seeking to maximise the profits and the efficiency of these enterprises, especially in the presence of ambiguities and inconsistencies in the policies and goals. In the same context, Buchanan indicates that the bureaucrats' attempts to achieve their self-interests explain the significant expansion in the size of the public sector and surplus labour in state-owned enterprises (Buchanan, 1977).

Furthermore, many researchers argue that governments seeking to achieve social goals that may adversely affect economic efficiency could use the public enterprises. Okun (1975), for instance, mentions that many governments seek to achieve equality in income distribution through public enterprises. The imbalance may lie in the distribution process itself in that, when bureaucrats and politicians transfer the money to the poor in society, some of this money may get lost in the process. Therefore, the only beneficiaries of the wealth distribution are politicians and bureaucrats. It seems clear, thus, that redistributive policies, which attempt to achieve equality, could cause many social and economic problems such as waste of public money, an increase in the inequality level and, hence, inefficiency in resource allocation (Okun, 1975).

Accordingly, public choice theory suggests that the role of government in economic activity should be very limited. Therefore, proponents of this theory believe that the privatisation of state-owned enterprises plays an important role in mitigating the negative effects on the economy. They explain that privatisation will prevent politicians and bureaucrats from exploiting SOEs to achieve their own interests (Agartan 2009). In addition, Abu Shair (1994) indicates that the role of government according to this theory should be a protective one to provide an appropriate environment for competition in the economy, and it is supposed to provide the appropriate conditions to protect the property rights of individuals and private companies. Socially, Okun (1975) and Buchanan (1986) argue that society needs the provision of equal opportunities for all citizens, rather than the state attempting to achieve equality in the distribution of income.

2.5.1.2 Property rights theory

The proponents of property rights theory argue that private enterprises are more efficient than public enterprises; they therefore support policies for privatising or transferring the ownership of public enterprises to the private sector, seeing this as an important factor in increasing the efficiency of these enterprises (Megginson, 2005).

It should be noted that Adam Smith (1776) stressed that ownership structure has a significant impact on productivity. He observed that the productivity of privately-owned lands was about three times higher than that of public lands. According to Smith, this preference for private land stems from the nature of incentives offered by the private property owners to the workers (Abu Shair 1994). Furthermore, Smith explained that the weakness in the productivity of public land could be attributed to the fact that individuals are more wasteful when dealing with the wealth and property of others than with their own money and properties. In other words, Smith explains that workers and managers do not engage directly in the results and consequences of the production process in public property. He points out that this could be the main reason for the neglect by managers and workers and their ineffectiveness in the management and operation of publicly-owned projects (Abu Shair, 1994).

In explaining the preference for private ownership, Davis (1971) indicates that this is due to three factors: transferability of ownership, ownership specialisation and risk-bearing. It is argued that these factors play a major role in improving the efficiency and productivity of enterprises through their impact on incentives and monitoring systems.

In regard to the transferability of property rights, there is an important difference between private ownership and public ownership, as owners in private enterprises have the right and ability to transfer the property rights, while owners of public enterprises (the public) cannot sell or replace property rights (Davis, 1971).

Davis (1971) and Abu Shair (1994) indicate that, theoretically, the taxpayers are all involved in the ownership of public enterprises; this means that this type of ownership is not voluntary or optional, which implies that there is no way for any owner to withdraw from public ownership. This means that even if owners are not satisfied

with the performance of public enterprises, they are not able to express their dissatisfaction through the sale of shares or transfer of ownership. Accordingly, workers and management in state-owned enterprises are not threatened by this kind of pressure. The absence of this factor or this pressure could lead to poor performance by managers and workers and, hence, to inefficient state-owned enterprises (Davis, 1971). In contrast, in private enterprises, poor performance by management and workers will be reflected in the value of revenue and profits and, hence, in the share prices of these enterprises on the exchange stock markets. This is because poor performance and declining profits in private enterprises will definitely persuade owners to sell their shares in these enterprises. This in turn helps financially in monitoring the performance and behaviour of management on the one hand and putting pressure on managers to improve performance and thereby increase profits and efficiency of the enterprises they manage on the other hand (Davis, 1971).

Concerning ownership specialisation, Abu Shair (1994) points out that, according to the right of choice in private ownership, individuals may choose to be owners of certain enterprises that are compatible with their experience and knowledge in a particular area. Specialisation may positively affect the decision-making process in private enterprises, leading to positive effects on performance and operation of companies as the owners make good decisions related to investments; furthermore, their expertise and knowledge of the activity gives them the ability to control and monitor the behaviour of managers in their enterprises. In public ownership, however, this advantage is not available because the property rights are divided among all the members of society (Davis, 1971; Abu Shair, 1994).

Risk-bearing is another argument for the property rights theory. The ownership by individuals in the private sector is based on personal preference and choice; thus, this choice indicates the consent of these owners to bear the investment risks. This responsibility towards risks will definitely encourage owners to participate and contribute actively in the decision-making process which could affect the profitability of the company. This is because company profitability or loss will be reflected directly in its investments and the prices of its shares in the capital market. In contrast, the ownership of public enterprises is not optional: all citizens are forced to be owners of these enterprises. Thus, risk-bearing will not be the responsibility of individuals

separately, which will adversely affect the contribution of the owners in the process of making decisions and drawing up policies for these enterprises (Davis, 1971). Accordingly, it seems clear that risk-bearing could be an important element in stimulating managers to improve the performance of private enterprises, while the absence of this factor will negatively affect the performance of public enterprises.

The theory of property rights, hence, stresses that the weakness of the property rights structure could lead to weak monitoring, rewards and punishment systems in public enterprises; therefore it could be argued that the ownership structure has a significant impact on the productive efficiency of enterprises. Therefore, the privatisation of state-owned enterprises, according to this theory, will improve efficiency through effective monitoring systems and incentives in these enterprises.

2.5.1.3 Principal-agent theory

The principal-agent theory discusses asymmetric information and incentives and their impact on the efficiency of enterprises. This theory favours the private sector in terms of the relationship or so-called agency that arises between owners and managers of enterprises. The agency situation arises when principals (shareholders or owners) delegate or give the right to agents (managers) to act on their behalf and make decisions concerning the management and operation of the enterprise. Although an agency relationship may be an advantage, especially when taking into account the role of specialisation in the management of enterprises, the agency problem occurs as a result of two factors: first, the differences in the objectives between principals (shareholders / owners) and agents (managers); second, the inability of principals to control and monitor the actions of agents due to the asymmetry of information available (Vickers and Yarrow, 1997; Jensen and Meckling, 1976; Walker and Vasconcellos, 1997). Therefore, this theory states that the public sector environment and asymmetry of information lead to poor management and inefficient enterprises accordingly. Consequently, the nature of private sector management and the pressures of competition, such as shareholder control and the index of stock prices, undoubtedly play an important role in stimulating private enterprise managers to produce efficiently.

Jensen and Meckling (1976) and Fabozzi and Peterson (2003) indicate that, if both principals and agents are utility-maximisers, this definitely leads to a conflict between their targets; thus, directors or agents will not act in the best interests of principals, especially when the monitoring and control systems are weak.

Fabozzi and Peterson (2003) give an example: in large enterprises, utility-maximisers could use their positions to enjoy extravagant personal benefits, so-called perks and perquisites, at the expense of owners and the enterprise itself. Thus, under these circumstances, principals should develop a mechanism to reduce the negative aspects of this conflict in the objectives. This mechanism should include a means of monitoring and controlling the actions of agents, as well as a system of incentives that motivate agents to work harder in order to achieve the goals of principals or owners (Jensen and Meckling, 1976).

Fama and Jensen (1983) believe that this process should be simple and easy in small enterprises, where there is plenty of information to help owners (principals) to monitor and track the decisions of managers (agents). In large enterprises, however, there is the non-observability problem; thus, monitoring of the agents is more difficult and complicated. In addition, in this situation, principals are facing the problem of the inability to determine an appropriate system of incentives for managers (agents). Consequently, the so-called costs of monitoring and control will emerge. Moreover, with the lack of information other agency costs could appear such as the so-called bonding costs. These are costs that could be paid by agents to guarantee to their customers that they will not take any decisions or actions that may harm their interests (Fabozzi and Peterson, 2003).

The proponents of agency theory argue that, although the agents (managers) are supposed to be utility-maximisers in large enterprises, be they public or private, the negative aspects of the agency relationship could be reduced in the private sector. This is because of the potential availability of many low-cost tools that help in monitoring the actions of managers in private enterprises. Vickers and Yarrow (1997) mention that there is a difference between the agency relationships in public sector and private sector enterprises. While the agency relationship in the public sector is between the government as (principals) and the managers (agents) who are managing

the enterprises, in the private sector the managers or agents will be part of the relationship, as in the public sector, the other party will be the shareholders or owners (as principals). In public ownership, bureaucrats, who are supposed to be utility-maximisers, run enterprises and attempt to achieve their own objectives through the exploitation of their positions in the management, at the same time trying to satisfy the agents (the government) through the achievement of its goals which are often social or political goals such as increasing employment and salaries, the redistribution of income and others. Therefore, achieving these goals usually causes additional costs in the form of burden on the budgets of companies, and hence adversely affects efficiency. In contrast, in the private sector, the goal is more obvious which is to increase the enterprise's profitability; thus, the management should work effectively to achieve this goal to satisfy the owners or principals (Megginson and Netter, 2001).

In addition, with regard to monitoring, the agency theory suggests that, in private property, the monitoring is less costly and more effective than in public ownership. Under private ownership, many internal and external sources provide necessary information for owners to monitor the actions of managers, as well as developing appropriate incentives to encourage them to achieve efficiency in their enterprises. Vickers and Yarrow (1997) indicate that the annual general meeting of shareholders in private companies, for example, could be one of the control mechanisms that provide some necessary information for shareholders, enabling them to judge the performance and efficiency of the agents in their enterprises. One may argue that, in large private companies, the managers have the ability to influence the shareholders and, thus, their decisions at the annual meeting, due to the extent of their activities and the large amount of information held by managers in such companies. However, in public ownership, there are no such annual meetings between the public and management. Since the government is the agent, ministers and senior officials in the government are responsible for monitoring the progress of enterprises and the efficiency of managers in achieving the objectives. Because of the ambiguity of the objectives, as well as the lack of adequate information, it is expected that the costs of monitoring in the public sector will be higher than in the private sector (Vickers and Yarrow, 1997).

Furthermore, the direction of share prices in the stock market can be an indicator and monitor of management performance in private enterprises. A company's performance is usually reflected in the value of shares in the financial market, so a decrease in stock price could be a signal that there are problems in the management of the company. In such cases, shareholders will push the managers to develop a strategy in order to improve performance and, hence, stock price in the market. In addition, shareholders (principals) are sometimes forced to take tougher measures such as changing some or all the members of the management team in the enterprise. The situation may worsen if the shareholders decide to sell their shares on the market as a result of their dissatisfaction with the administration's performance, as well as failed attempts to find solutions to correct the management's policies. Insisting on such a policy will further reduce the value of the company on the market, which will put the company in a dangerous situation in terms of financial obligations; moreover, in such situations the company may be unable to obtain additional capital and may therefore be exposed to the problems of financial distress and bankruptcy (Abu Sahir, 1994). Thus, it seems clear that this is a powerful tool to pressure the management to improve policies, and this inexpensive tool is not available for monitoring and controlling managers of public enterprises. Therefore, in public ownership the agency cost will be more expensive, reducing the efficiency of SOEs as a result.

According to the agency theory, privatisation or property transfer from public to private hands will reduce the budget burdens of public enterprises; this is achieved by changing social and political goals, which are usually unclear, to economic goals that involve maximising the profitability of companies. In addition, the change of ownership means greater efficiency and effectiveness of these enterprises as a result of the possibility of monitoring the management of these enterprises at minimal cost, as well as the possibility of creating appropriate incentives for managers to achieve the objectives efficiently.

2.5.2 The Effects of Competition

It is argued that the private sector not only provides better management incentives structure, better monitoring incentives and better monitoring means than government ownership, but also promotes competition. In contrast, state ownership creates a

monopolistic environment in the economy, and this could be one of the reasons for the inefficiency of SOEs (Smith and Trebilcock, 2001).

In the free market, profit maximisation is the most important incentive for managers and stockholders in the private sector. According to this hypothesis, managers and shareholders in private enterprise wish to supply the product of their enterprise at the highest possible price. In an environment that allows producers to determine the prices of their goods and services, these prices will be inefficiently high; producers will make excessive profits and society will face welfare consequences. This consequence occurs since monopoly producers have the ability to control the price at which they sell their goods, and accordingly maximise profits by supplying products at a level at which their marginal revenue equals their marginal cost of production. However, at this level of production there are still consumers who, while not willing to purchase the monopolist's product at the required price, would happily pay for the product at a price greater than or equal to the monopolist's marginal production cost. Competition creates allocative efficiency by eliminating the ability to situate prices from the monopolist and developing the market mechanism as an alternative. In theory, in a competitive market, where producers are earning economic profits, this motivates other producers to enter the market and provide or supply consumers with goods until the product price has been driven down to the marginal cost of production. Therefore, it seems clear that losses associated with monopolistic production could be eliminated by the free market mechanism (Smith and Trebilcock, 2001).

Moreover, competition prompts productive efficiency by encouraging producers to reduce costs. Since the market mechanism rather than a company itself determines the price of the company's product, cost reduction is a main way for the company to increase its profits. Where cost reductions allow producers to make profits, new producers are expected to enter the market to capture some of those economic profits, the free market mechanism once again driving prices down to companies' marginal cost of supply. In this competitive environment, constant concentration on productive efficiency becomes a matter of a company's very survival. In contrast, in monopoly conditions, there is no chance of new producers entering the market; thus, monopolists are not faced with the threat of free market power and hence do not have the same incentives to increase productive efficiency (Smith and Trebilcock, 2001).

It could, however, be argued that monopoly is not peculiar to public enterprise, as natural monopoly also occurs in the private sector in many cases. It could arise when there is a sole source of supply of a raw material, or when scale economies permit one enterprise to provide the whole market at a lower price than that which could be charged by two or more enterprises. These forms of private monopoly are usually subjected to extensive regulatory arrangements. Given the urgent need for such arrangements, it could be argued that public ownership would be more appropriate in such conditions. This argument, however, ignores the possible negative consequences of public ownership as discussed earlier. Moreover, projects that are so-called 'natural monopolies' which have been nationalised and operated as a single unit are often divisible into separate parts, some of which are willing to engage in competition; while the national network or transmission schemes of electricity and gas are true natural monopolies, competition is possible in the areas of electricity generation and gas production, and the retailing thereof (Bishop *et. al* 1994; Tandon, 1995).

Furthermore, state ownership in many developing countries has rarely been limited to natural monopolies, but has instead been extended to dominate all economic activities (Bouin, 1992). Where a government operates in an industry, it has a direct stake in protecting that sector, and a wealth of experience has revealed that the result of this protection is reduced competition (Shirley, 1994). In fact, in many developing countries, the dominance of state enterprises in economic activities, domestic credit and foreign financing has negative impacts on the private sector and its contribution to the economy (Adam *et al.*, 1992). In addition, the authors suggest that, when state ownership extends over a number of projects operating in similar areas, it is unlikely that decisions related to the pricing process will be made independently. Therefore, it seems clear that the privatisation of state-owned enterprises will reduce the state's role in economic activity, at the same time creating a competitive environment that improves the performance of these enterprises, thereby increasing the efficiency of the economy.

2.6 CONCLUSION

In order to understand the role of the public sector, the post-World War II political economy should be understood, as the state's role in economic life increased significantly and vast numbers of economic enterprises under the control of the state were established as a result of many economic, political, social and financial considerations. In understanding such developments, this chapter discussed the impact of public sector enterprises on the economy and concluded that several positive results were achieved, especially in the early stages of public sector dominance. However, by the 1980s, the disadvantages of the public sector began to appear in terms of low performance and efficiency of public enterprises, increasing fiscal deficits in government budgets, low economic efficiency, and an external debt crisis in many developing countries. As a result, calls increased for the need to adopt reform programmes, including privatisation policies, in order to eliminate the distortions created by the public sector involvement. This chapter, therefore, also discussed the privatisation policy by referring to the concept and the objectives of privatisation, the most important theories supporting privatisation and private ownership.

CHAPTER 3

REQUIREMENTS FOR SUCCESSFUL PRIVATISATION

3.1 INTRODUCTION

Past experience has shown that the privatisation process is neither easy nor the same in all countries. According to empirical studies, in many industrialised and developing countries privatisation has achieved many positive results such as increasing the profitability of enterprises, improving the quality of products, reducing the budget deficit, and developing domestic financial markets (Megginson and Netter, 2001). In many developing countries and transitional countries, however, the results of the experiment are ambiguous, thus raising doubts about the effectiveness of the privatisation policy (Parker and Kirkpatrick, 2005). These different results may be attributable to several factors such as economic structure and conditions and other institutional factors considered to be obstacles and problems that might be faced during the implementation of the programme, as well as the variation in the targets, strategies and tactics that have been adopted from one country to another. Although there is no uniform model for the application of the privatisation policy, worldwide experience has proved that there are several financial, economic, managerial and legal requirements that should be settled to achieve the desired objectives of privatisation (see, for example, Desha, 1991; Kikeri *et al*, 1997; Kikeri and Nellis, 2002; Parker and Kirkpatrick, 2005; Nellis, 2007).

This chapter, therefore, aims to discuss the core requirements that should be taken into account by governments in the privatisation process of SOEs to achieve the privatisation objectives.

3.2 MAIN REQUIREMENTS FOR EFFICIENT PRIVATISATION

Requirements for successful privatisation may vary depending on the nature of the economy; market-based economies, for instance, require certain conditions such as political support, transparency in the implementation of the programme, and mitigation of the social effects that may accompany the privatisation of SOEs. In transitional countries, however, further arrangements need to be taken into account in

conjunction with those requirements mentioned above, as the privatisation in such countries does not only mean selling assets or SOEs but also means transformation from a different economic regime, such as a socialist or state-controlled economy, to a market economy.

Accordingly, the privatisation process should be applied as one part of a comprehensive programme including the creation of an appropriate financial, economic, and legal environment to achieve the desired goals of privatisation and economic transformation policies (Lieberman and Fergusson, 1998; Kikeri *et al.*, 1997; Parker and Kirkpatrick, 2005; Nellis, 2007). Therefore, the main requirements for the successful implementation of privatisation programmes are discussed in detail in the following parts.

3.2.1 Political Support

Political support is the cornerstone of the success of privatisation, whether in regard to the implementation stage of the programme or in terms of providing the required conditions to ensure success and achieve the desired goals (Lieberman and Robert Fergusson, 1998; Kikeri and Nellis, 2002). To support this, Lieberman and Fergusson (1998) claim that privatisation is an extremely political matter which begins from the belief of leaders and decision-makers that private ownership is better than public ownership, and that SOEs' costs have become a considerable burden on the public budget and should, therefore, be privatised. Thus, they believe that the success of privatisation programmes requires top-level political commitment. In this context, Bhouraskar (1999) indicates that, in the implementation stage, governments should support the process and be committed to developing a comprehensive plan for implementation, establishing an independent agency responsible for implementation in a transparent manner, and developing an appropriate plan to win the support of the parties associated with the programme to avoid any disruption in the implementation process.

It is also important to note that the government's commitment to creating an appropriate environment for a market economy is a prerequisite for the success of the privatisation process, particularly in developing and transitional countries, because the success of privatisation cannot be anticipated without the development and

enforcement of laws and regulations appropriate to a market economy, such as a capital market, property protection, competition and other required laws.

Furthermore, to ensure a successful privatisation programme, it should be executed within an integrated reform programme where the government's commitment to developing and implementing a set of reform policies to support the market economy, such as establishment of stock market, reforming the banking sector, encouraging foreign and domestic investments, market liberalisation, price deregulation, the imposition of the hard budget, and other necessary financial and economic policies, is the key condition to create a competitive environment and hence achieve economic efficiency, which is the main objective of privatisation and the transition to a market economy (Shirley, 1997). This also indicates the importance of political support and the government's commitment to the implementation and success of the privatisation programme.

An evaluation of the privatisation programmes in various countries in the post-Washington Consensus period since the early 1980s indicates that governments in these countries, including industrialised countries, expressed their firm commitment to the implementation of privatisation policies, such as in the UK, an industrialised country, Turkey, an emerging country, and Hungary, a transitional country.

3.2.2 Transparency

There is a general conviction that a market economy and robust private sector can develop within democratic polity, which necessitates accountability and, hence, transparency. An important condition, therefore, for the privatisation process to be effective is that the privatisation agenda must be transparent. Transparency implies that the privatisation policy has a clear legal structure and sales measures are unambiguous and well-defined (Lieberman and Fergusson, 1998); also, such information should be accessible so that 'crony capitalism' can be prevented. Governments that do not pay sufficient attention to these principles devalue their reform programmes and thus lower the value of privatisation, because investors certainly will not engage in non-transparent transactions (Lieberman and Fergusson, 1998; Gupta, 2000; Kikeri and Nellis, 2002). Kikeri and Nellis (2002) stress that the lack of transparency in the implementation of privatisation leads to serious

consequences for the reform process as a whole. In their words, “Lack of transparency leads to allegations of corruption and provides ammunition to political and other opponents, creates backlash from investors and the public at large, and threatens to halt privatization and liberalizing reform in general” (Kikeri and Nellis, 2002: 25).

Although privatisation has become widespread around the world and has received great support from many financial international institutions, local governments and economics researchers, privatisation is still viewed with suspicion and caution by the general public, especially in developing and transitional countries (Kikeri and Nellis, 2002; Nellis, 2007). Many surveys exploring people’s views on privatisation policies concluded that the majority of respondents, ranging from those opposed to privatisation to others who see it as resulting in many problems in the implementation process, do not support the process to the desired level. Nellis (2007) refers to a large-scale survey that shows the opinions and reactions of about 19,000 people from 18 countries in Latin America on the privatisation programme. The results of this survey showed that about 55% of the respondents expressed dissatisfaction with privatisation in 2001; in 2003 this proportion increased to 80%, and in 2005 it dropped slightly to about 70% of the responses. These responses generally refer to the dissatisfaction among the public with the privatisation programmes in those countries; such low support derives from implementation problems which produced adverse results in terms of policy reforms and also in the implementation of privatisation itself. Moreover, Kikeri and Nellis (2002) indicate that there was another survey in Argentina, and in Latin America in general in 2002, that illustrates a considerable decline in support for the privatisation policy, generally as a result of weak economic situations, but in fact also due to the ways in which the process has been operating in practice, resulting in increased corruption.

Furthermore, the absence of an appropriate legal framework and the necessary arrangements to ensure transparency during the transfer of ownership of SOEs causes big problems and opposition by the public to the privatisation process in some transitional countries. Black *et al.* (2000) indicate that in Russia, for instance, insiders were allowed to engage in extensive ‘self-dealing’ in the mass privatisation, while the following privatisation ‘auctions’ were a generous giveaway of the most important public assets at bargain prices to a small number of well-connected oligarchs or

business elites. Consequently, the budget was adversely affected due to the lost revenues on the one hand, while most of the public opposed the privatisation and claimed that it is the main cause of corruption, loss of wealth and creation of different classes in society, on the other. Consequently, it seems clear that governments should take into account the importance of transparency during the privatisation policy implementation.

Ensuring transparency in the implementation of privatisation requires a set of institutional and legal arrangements. Kikeri and Nellis (2002) argue that it is important to transfer assets in a short time without exceptional privileges and special considerations for insiders, especially in the case of privatisation of competitive companies. They indicate that many experiences in developing and transitional countries, such as Mexico, Bulgaria and South Africa, show that once a firm is a candidate for privatisation, any delays in implementing the transaction lead to serious problems before and during privatisation, such as a decline in operations, asset-looting, and a lower sales price. Eventually, some buyers may come forward and, rather than liquidating such companies, which is the correct approach, unusual arrangements may need to be negotiated; thus privatisation in these situations could lead to a reduction of state revenues leading to non-transparent actions. In this context, de Silanes (1997), in his study of the Mexican experience, illustrates that the delay in the privatisation process would cause an approximate 24% drop in estimated revenues per annum.

Creating an effective institutional structure is therefore one of the most significant measures for providing the transparency required for successful privatisation. Guislain (1997) suggests that this process involves creating some kind of focal point for privatisation implementation with the necessity of taking into account the reduction of bureaucracy problems as far as possible, direct contact with and support of the highest political authorities in the country, and sufficient resources and flexibility to employ the diverse and expensive private services and resources required to organise and complete the privatisation policy. Moreover, independent financial advisors and qualified experts are important in the implementation of privatisation. They play a significant role, especially in the process of evaluating the assets of enterprises based on market mechanisms to ensure that prices are realistic, fair and politically

justifiable. Rose-Ackerman (1999) suggests that corrupt bureaucrats may present misleading information to the public that makes the enterprise's situation look weak, while revealing to chosen insiders that it is in fact performing well. Consequently, a gap will emerge between the real price of the enterprise's assets and the price known to the public, with the difference going directly into the pockets of corrupt bureaucrats.

On the other hand, Kikeri and Nellis (2002) suggest that leaving some privatisation transactions to sector ministries can work in some cases; in this condition there is a high level of political commitment and sufficient managerial and administrative capability. They indicate that in Bulgaria, for example, Bulgarian ministries in charge of a particular sectorial portfolio were more effective for a time than the national Privatisation Agency in privatising some SOEs. However, such experiences do not necessarily exist in all countries. Moreover, having several sale points could create concerns about stability and transparency.

The provision of competitive conditions in the sale of SOEs in itself can be one of the best ways to achieve transparency, as well as being an effective factor in yielding the greatest economic and financial benefits for governments. Developing clear procedures for all functions related to the sales process and the announcement of tender and evaluation of assets, as well transparency in the process of opening of bids, is very important. In practice, many countries were eager to provide these conditions to promote transparency in the implementation of the privatisation. In Bolivia, for example, the government attempted to implement a transparent sales process, and opening of bids was conducted on national television in an attempt to ensure transparency (Kikeri and Nellis, 2002).

Although privatisation by public offerings or share issue techniques are commonly regarded as the most transparent and profitable for governments many developing and transitional countries do not have capital markets, quality companies, or appropriate situations in which to apply this method. Therefore, in these conditions there is no option for governments to privatise some SOEs except through direct negotiations with buyers; thus the openness and competition in the selection procedure should be applied to guarantee the transparency in privatisation implementation and increase

revenues from the proceeds of the sale (Kikeri and Nellis, 2002). In this context, La Porta and de Silanes (1997) illustrate that, in the Mexican experience, each additional bidder participating in a tender process would increase the net revenues to the government by approximately 12%.

Therefore, it seems clear that governments that intend to privatise public enterprises should take into account the transparency in the implementation process through making essential arrangements, such as establishing a specialised agency and dealing with expert and independent offices for the evaluation process, as well as making all the necessary arrangements to ensure integrity in the course of the sale, such as advertising and preventing insiders from engaging in transactions that might be seen as suspicious.

3.2.3 Mitigation of the Social Impact of Privatisation

There are many social effects that may result from the privatisation of SOEs, and these should be taken into account and treated carefully; otherwise they may bolster the opposition forces and possibly hinder the efficient implementation. The adverse impacts of privatisation could include reducing employment in privatised firms, high prices, and the reduction of subsidies that were provided by public enterprises. These are discussed in detail in the following sections:

3.2.3.1 Employment reductions

The implementation of economic reform often involves massive labour force reductions, implying that privatisation may be controversial. However, governments are supposed to develop a set of appropriate procedures to resolve this problem (Hoven and Sziracki, 1998; Fretwell, 2004; Gupta *et al.*, 2001; Kikeri, 1998). These procedures may include the involvement of workers in the privatisation process, as well as developing proper methods to deal with the issue, such as the provision of retirement and severance benefits to encourage voluntary departures, training programmes, and reintegration of workers into the economy (Gupta *et al.*, 2001; Kikeri, 1998; Hoven and Sziracki, 1998; Fretwell, 2004).

Maintaining the same level of labour during the sale of SOEs was not an available option for companies and industries that have demobilised large numbers of workers

or those with strained relationships with the workers. Since most of the SOEs were/are overstaffed, one can argue that the way this problem is addressed varies from one company to another. In this context, Gupta *et al.* (1999) indicate that companies can be divided into three groups:

(i) The first group includes companies that may be able to increase their efficiency or expand their activities with new owners and management after privatisation; hence, the level of employment may actually increase. In fact, many studies have proved this hypothesis. For example, Galal *et al.* (1994) show that, in 10 out of 12 companies privatised in Chile, Malaysia, Mexico and the UK, there was an increase in the level of employment through the expansion of activities. Moreover, Boubakri and Cosset (1998), using a sample of 79 companies in 21 countries, demonstrated that employment increased by more than 10% for about two thirds of the sample. It should be noted that restructuring and new arrangements made by the new management were the main reasons for these positive results after privatisation rather than the change of ownership alone. In other words, the restructuring of employment before and during privatisation helped companies to expand their activities and create new opportunities for employment. Accordingly, it seems clear that there was a reduction in employment at the beginning of the process (Gupta *et al.*, 1999).

(ii) The second group includes companies that may be viable in the long run, but with a permanently reduced labour force. In fact, there are numerous examples of this type in many countries such as Argentina, Brazil and others (Kikeri, 1998; Estache *et al.*, 2000). In Argentina, for example, surplus labour was a major reason for the ineffectiveness of SOEs and was thought highly likely to be an obstacle to the transfer of such companies to the private sector. Accordingly, the government reduced the employment rate in companies selected for privatisation. For example, the government had a plan to reduce the number of workers in the railway company over three years before privatisation; as a result of this policy, it was able to reduce the surplus labour by approximately 80,000 employees in this company (Kikeri, 1998). Similarly, in Brazil the government reduced the number of railway workers by approximately 40%, to attract the private sector to SOEs in this industry (Estache *et al.*, 2000).

(iii) The third group includes companies that cannot continue in the business. In many cases, governments are forced to liquidate public companies that are facing so many problems that they cannot survive; at the same time, they are not feasible economically or attractive to private investors, so they cannot be privatised. Consequently, the liquidation of these companies means that a large number of people will lose their jobs (Gupta *et al.*, 1999).

It seems clear, therefore, that privatisation of most SOEs, in all groups, requires careful handling by the government on the issue of labour reduction, as the aggravation of this problem will cause discontent among workers in particular and in society in general. This opposition or dissatisfaction could create political pressure that might adversely affect the success of the privatisation process and could hamper continuity in the implementation of the programme in some cases (Gupta *et al.*, 2001; Kikeri and Nellis, 2002; Hoven and Sziracki, 1998; Fretwell, 2004).

In practice, the opposition of laid-off workers was a major reason for the failure of privatisation or the delay in implementation in many countries. In India and Turkey, for example, organised opposition by workers put strong pressure on the government, causing a delay in the restructuring and privatisation of loss-making public companies and, thus, the continuity of the financial burden on the state budget. Moreover, in Mexico the strong opposition of labour was one of the most important reasons why decision-makers changed their plan to privatise many of the loss-making companies, especially in the petrochemical sector (Gupta *et al.*, 2001).

Fretwell (2004) indicates that the development of an effective mechanism to deal with the surplus labour problem would achieve a set of economic, political and social objectives. From an economic standpoint, a well-designed mechanism would give governments and new owners the opportunity to restructure privatised enterprises, and increase their efficiency, productivity and competitiveness by reducing surplus labour costs. Moreover, it would help to increase the effectiveness of the workforce in the economy through training and re-integrating them into other sectors. Furthermore, with regard to social objectives, it seems clear that many workers may lose their jobs as a result of restructuring and privatisation of public enterprises, thus negatively affecting the welfare of these workers and their families. Therefore, taking the

necessary measures to support and protect this segment of society would protect these families from slipping into poverty. In addition, politically, a clear and effective policy that satisfies workers and obtains their support is very desirable. In this context, Bhouraskar (1999) believes that the reduction of employment without appropriate plans to compensate laid-off workers could create strong opposition among workers and labour unions. This opposition may place great pressure on governments and decision-makers, and could cause the privatisation programme to stall. Therefore, well-organised measures not only help to satisfy employees and reduce their opposition, but also mobilise the entire community's support for the privatisation programme (Fretwell, 2004).

Although different methods have been adopted by governments to mitigate the possible social effects of privatisation, particularly with regard to surplus labour in public companies, some common arrangements have been applied in many countries, and can be summarised as follows:

3.2.3.1.1 Restructuring after ownership change

The existing literature shows that there have been several attempts in the privatisation process to assign the task of reducing the surplus labour to private investors, on the grounds that they have better ways than governments to determine the level and nature of the skills required in their companies, and they also have greater incentives to reduce the cost of lay-offs. Moreover, in many cases privatisation agreements between governments and private investors include arrangements to maintain the employment at the same level for a period of time after the transfer of ownership of public enterprises (Hoeven and Sziraczki, 1998). These arrangements could include some advantages, such as temporarily alleviating the opposition of workers and labour unions to privatisation, and providing sufficient time to create the proper environment for the development of the private sector to contribute later in the absorption of surplus labour in these enterprises (Hoeven and Sziraczki, 1998). Most of these attempts, however, have involved several risks; for example, private investors are usually very wary of the political consequences that may result from the process of laying off workers on a large scale, especially when there is strong opposition by labour unions. Consequently, this caution by investors could adversely affect their

ability and willingness to privatise SOEs in such conditions. Moreover, if private investors agree to retain all employees and accept the financial burden of surplus labour, they will ask for reduced prices accordingly, leading to lower revenues from the sales process, and thus possibly causing allegations that public companies are sold at low prices. Alternatively, they could claim subsidies from governments to cover expenses resulting from the surplus labour, which conflicts with the main objectives of the privatisation programme, such as stopping subsidies and reducing the budget burden; this could also adversely affect competition in the economy (Ramamurti, 1997; Kikeri, 1998; Kikeri and Nellis, 2002). In this context, Kikeri and Nellis (2002) indicate that, in Morocco for instance, the new owners of a cement company decided to keep all the employees without making any changes, although the estimates indicate that the surplus labour in this company may have exceeded 8%. The new managers indicated that the extra workers were expected to be useful soon as a result of new plans that would expand the business. However, the managers declared that, were the company to face any difficulties or problems in marketing, it would renegotiate the deal with the government. This means that the ability of private companies to solve the problem of surplus labour is limited and requires the availability of certain conditions, which may not be easily available. Thus it seems clear that these arrangements may also affect the speed of the restructuring of employment in privatised companies, which could affect their competitiveness and efficiency after privatisation. Therefore, governments should intervene and not leave the issue of lay-offs entirely in the hands of the new owners from the private sector, as this might create serious problems such as delays in privatisation, negative effects on competition or lack of efficiency of privatised enterprises (Kikeri, 1998; Kikeri and Nellis, 2002).

3.2.3.1.2 Voluntary departure and early retirement

Early retirement and voluntary departure programmes are the most common ways of dealing with the problem of surplus labour in SOEs (Rama, 1999; Gupta *et al.*, 2001; Fretwell, 2004). The amount of compensation and financial incentives provided by governments in these programmes are not fixed in all countries and all companies; they are based on several factors such as legal and contractual obligations and the power of the labour unions involved in negotiations with governments. For example,

Estache *et al.* (2000) indicate that, in the railway company in Brazil, amounts paid for voluntary departures were equivalent to twenty months' salary, while in other countries such as in Argentina and Bangladesh incentives to the value of three years' salary were granted (Kikeri, 1998).

Early retirement programmes and incentives for voluntary departures could be good policies to gain the support of workers, to allow application of a smooth privatisation and to mitigate the social impacts resulting from the lay-offs in SOEs. However, if the planning of these programmes is not appropriate, they will become expensive and difficult to finance, which negatively affects the effectiveness of the privatisation programme (Rama, 1999; Kikeri and Nellis, 2002).

Kikeri and Nellis (2002) indicate that in India, for example, according to the voluntary departures programme, labour unions asked for five years' salary as compensation for dismissed workers over the age of 40 who had worked for at least 20 years; other countries such as Sri Lanka have offered compensations and incentives close to this amount. Moreover, Kikeri (1998) mentions that the Pakistani government applied a voluntary departure package and offered a more generous proposal: the severance pay for laid-off workers was the equivalent of five months' salary for each year of service. Moreover, the absence of appropriate policies and arrangements to resolve this problem may lead to more generous agreements between governments and workers, thereby leaving governments or companies unable to complete these agreements as a result. The best examples of this situation occurred in countries such as Ghana and Tanzania, where the governments failed to fulfil their promises on the issue of compensation for laid-off workers. Similarly, in Mali severance payments were about 24 months' pay plus the same amount to found new private project; this was beyond the capacity of the government and created unsustainable commitments, thus forcing the government to stop the privatisation programme.

In addition, Rama (1999) states that overly generous packages not only lead to unsustainable costs but may also cause other serious problems such as the adverse selection problem. In Argentina, for example, specifically in the steel and railway sectors, very generous offers were made available to all workers, leading to the loss of competent staff and impacting negatively on the performance of companies after

privatisation. However, Kikeri (1998) and Fretwell (2004) believe that, to mitigate the financial risks and the problems of adverse selection, decision-makers should develop a comprehensive strategy to identify the activities and workers who could be demobilized, and thus to grant compensation only to those workers rather than all of them; these plans or studies are also important to take advantage of qualified staff in the privatised companies.

Rama (1999) and Kikeri and Nellis (2002) indicate that the early retirement programme could also cause financial problems and an unsustainable burden on the social security system, which is usually already exhausted. Therefore, it is important to coordinate this programme with parallel reforms in the pension system. When pension funds are insolvent, the employees are less likely to retire early for fear of a lack of regularity and stability in their pensions after retirement. To resolve this problem within the privatisation programme, many countries have worked to create separate funds for pensions, which are managed by private sector companies. These funds are financed by contributions from businesses, employees and the state in order to be able to pay the pensions of staff who have been referred for early retirement (Kikeri, 1998).

It could be concluded, therefore, that although the voluntary departure and early retirement programmes might be socially and politically acceptable, they need proper planning to avoid many problems that may occur such as inability to fulfil promises and adverse selection. Moreover, adopting this policy, especially the early retirement programme, requires the development of appropriate strategies to reform the pension system.

3.2.3.1.3 Employee share ownership arrangements

According to this approach governments reserve shares for employees in privatised companies usually at reduced prices and with simplified financial procedures, to obtain labour support for the privatisation programme. Employee share ownership schemes have been used in many countries such as Argentina, Bangladesh, Bolivia, Chile, Mexico, Morocco, Ghana, Pakistan, Turkey and others (Kikeri, 1998). For example, Chile sold 5-10% of the shares in its privatised companies directly to employees by giving them end-of-service benefits that can be used to pay for

discounted shares. In addition, the government gave them a guarantee to repurchase should the value of the shares decrease (Shirley, 1994b). Similarly, in Mexico, the government granted loans, through state-owned banks, to the workers' unions to enable them to buy discounted shares in privatised companies (Galal *et al.*, 1994).

This technique often provides high financial gains for workers due to rising stock prices after privatisation and the change of management in the company. For example, in December 1987 in Chile, 8.5% of the workers in one electricity generation company bought 5% of its shares. As a result of improvements in the management and investment environment, the stock prices went up five times, just three years later (Shirley, 1994b). Likewise, in Mexico, 4.4 % of the shares of the telecommunications company 'Telmex' were sold at \$0.70 a share, compared with a \$1.36 initial offer price for the public. The prices of shares increased rapidly, and went up to almost \$36. Galal *et al.* (1996) believe that, due to this procedure, the Mexican government succeeded in obtaining the support of workers for the privatisation programme.

It seems clear, therefore, that allocation of shares to the workers in the privatised companies, especially profitable companies, could be one of the successful techniques for gaining the satisfaction and support of employees for the privatisation of their companies.

3.2.3.1.4 Support for training and reintegration

Governments often combine compensation programmes and a policy of support for training and reintegration (consulting, training, assistance for new jobs and supporting small businesses) in order to help workers who have been demobilised due to the privatisation process to reintegrate into the labour market or start new private businesses (Gupta *et al.*, 2001). Although Hoeven and Sziraczki (1998) indicate that this technique has been applied in some countries such as India, for example, others such as Kikeri (1998) believe that the policy of training and reintegration might be difficult to apply in most developing countries. She explains that, despite the scarcity of organised studies in most developing countries, the indicators suggest that the delay in implementation, weaknesses in institutional capacity and low educational level may be the major causes of the failure of training programmes and reintegration. For example, in many countries such as Bangladesh, Brazil and India the demand for

training programmes was much lower than expected, at less than 20%; moreover, most of the surplus workers had left their jobs before the implementation of training programmes. However, with proper planning for training programmes, many social and economic benefits will be realised; workers are supposed to gain appropriate skills that will ensure that they are employed in more effective economic activities. Moreover, better results can be achieved through the provision of training opportunities for certain groups that require less effort and cost, and by focusing on people who are still far from retirement age so that the economy can benefit from their skills for years.

It should also be noted that subcontracting policies with newly established cooperatives or small businesses could temporarily represent a reasonable way of reintegrating laid-off workers (Kikeri and Nellis, 2002). This approach has been adopted in many developing countries; in Guinea, for example, the water company helped 250 laid-off workers to create cooperatives in order to provide services to extend water supply networks, maintenance of canals and other related services. Thus, about twenty small cooperatives were established, all of which all were working under subcontracts signed with the old water company. Moreover, in Argentina, one of the oil companies signed about 200 contracts with small private contractors, which were founded by about 5,300 former employees in the oil sector (Kikeri, 1998). In addition, this method was pursued in Egypt, where the electronics company in Alexandria gave many of the former employees the right to engage in tasks with the company as private suppliers, such as maintenance services, and also allowed them use the workplace and the equipment available. These services were contracted out to former workers for one or two years without bidding, and these contracts would be open for bidding later in competitive conditions. The advantage of this type of contract is to give an opportunity for employees to gain more work experience and prepare workers to deal with a more competitive environment in the market economy (Kikeri and Nellis, 2002). The implementation of this programme requires support staff to ensure the competitiveness of former workers in the market; such support may include providing services and facilities for the establishment of companies, training to create projects, and advantageous contracts. This support may help in solving the employment problem. However, it may adversely affect competition in the market;

therefore this method should be well-organised according to a time plan so as not to produce negative consequences for the entire reform programme.

3.2.3.2 Effects on the quality and prices of products and potential solutions

While privatisation of SOEs is expected to increase the welfare of society, in some cases where the absence of competition and regulatory measures is an issue, the outcome may be contrary to expectations (Khemani, 1999; Parker and Kirkpatrick, 2005; Beghetto, 2008). In other words, the effects of privatisation on consumer welfare could be contradictory. As stated, normally privatisation is expected to deliver productivity and allocative efficiency resulting in better-quality products at lower prices. However, the products of SOEs are often heavily subsidised and, thus, the privatisation of these enterprises will lead to the reduction of subsidies, resulting in an increase in the prices of their products in the market; consequently consumers who benefited from the subsidy would be affected, resulting in a loss in consumer surplus. In other words, living standards of poor segments of society, who enjoyed the benefits of the subsidies, would be adversely affected as a result of higher prices and lower subsidies under privatisation.

However, with regard to subsidies, the privatisation does not necessarily have a negative impact on consumer welfare. Gupta *et al.* (1999) explain that, in conditions of weak regulatory agencies and the spread of corruption, especially in developing countries, although the prices of goods and services provided by SOEs seem low, the access of poor segments to these products is limited in reality, and thus the real beneficiaries are the wealthy class. Therefore, in this case, privatisation aims to eliminate price distortions by providing goods and services to all segments of society. Moreover, to compensate poor and vulnerable groups who might be hurt by increased prices and reduced subsidies, many arrangements could be put in place. As a first option, governments could implement the policy of reduction of subsidies in a gradual manner to give consumers time to adjust; the second option is to provide limited subsidies such as food stamps and cash transfers instead of price reduction. The most important issue is that, in the case of subsidies as mentioned above, social benefits must be dedicated only to the poor in society to offset their loss in consumer surplus (Gupta *et al.*, 1999).

Furthermore, privatisation may affect consumer welfare in the case of transforming public monopolies into private monopolies (Vickers and Yarrow, 1991; Khemani, 1999). This possibility highlights the need to provide a competitive environment that stimulates companies to raise their efficiency, rather than simply transferring the ownership. This environment can be created by liberalising the market and developing appropriate mechanisms to regulate and supervise the market (Gupta *et al.*, 1999). This regulatory policy should include the development of an appropriate competition law and creation of a body for competition and antitrust. This would eliminate any fraud or collusion that may occur in the market by strong or dominant companies, which seek to raise prices, monopolise certain goods or prevent other producers from entering the market; thus, competition law should be clear and include all the fines and penalties that will be incurred by the manipulators of competition in the market, in order to protect consumers (Khemani, 1999; Beghetto, 2008). In practice, however, numerous studies have proved that many countries, especially developing and transitional countries, have failed to produce an effective competition law to protect consumers and prevent anti-monopoly practices in their markets. For example, El-Dean (2002) indicates that the ambiguity and complexity of competition laws in some transitional countries, such as Poland and Hungary, were major obstacles to the effective application. Moreover, lack of resources and experts in the competition agencies in some developing countries adversely affected their ability to enforce competition laws. For example, in 2000, the Competition Office in Tanzania had only two economists and no lawyers. In addition, antitrust offices or competition agencies were not independent enough to deal with anti-monopoly practices in many developing countries. In Pakistan, for example, government intervention in the working of the competition office in the 1990s was the major barrier to achieving competition law objectives (The World Bank, 2005). Furthermore, Khemani (1999) indicates that, despite the existence of a law banning monopolies and removing obstacles to competition in Russia, the inability of the administrative institutions to enforce these laws has led to market concentration and weak competition, thus leading to higher prices of goods and services and other negative social effects.

The regulatory process, however, could face more difficulty in regulating the behaviour of the private sector and protecting consumers from high prices and low-

quality products in the non-competitive sectors or natural monopolies, particularly in developing countries (Nellis, 2007). In the case of natural monopolies, however, competition laws might be undesirable and inefficient. A natural monopoly arises when economies of scale are extremely large and over the relevant range of output. Then, the whole market can be served by only one firm or supplier at a lower cost than any combination of two or more firms (Mankiw, 2008; Baumol and Blinder, 2009). It is consequently less costly to society to have production provided by one company than by many. The best examples of natural monopolies are the infrastructure companies such as electricity, gas, water and railway companies. For example, rather than having three companies in any monopolistic sector, be it electricity, gas or railways, laying separate grids or networks of cables, pipes or rail where one would do, it might be more efficient to give just one firm a monopoly subject to effective regulation of such matters as prices and access to the network (Sloman and Wride, 2009). The operation of natural monopoly companies, similar to any other monopoly, will result in several problems such as output reduction, increasing prices, and income transference from consumers to producers or monopolistic companies (Baldwin and Cave, 1999). Therefore, competition laws are not the proper reaction in the case of natural monopolies as competition might be socially costly; thus, regulation of prices, quality and access could be a better solution.

To address and avoid problems associated with privatised natural monopolies and protect consumers from high prices and low-quality products or services, several arrangements can be adopted during the implementation of the privatisation process. Breaking up, or ‘unbundling’ of large monopoly companies may be an appropriate way to promote competition in some sectors. For example, the electricity sector is likely to be divided into generation, transmission, distribution, and retail electricity suppliers; the private sector is then encouraged and supported to privatise these unbundled companies to improve their performance and efficiency (Zhang *et al.*, 2008). Although the unbundling policy could lead to positive results in some cases, development of a regulatory mechanism to prevent the disadvantages of monopolies and to protect consumers is still required, especially in sectors which are still monopolised by one or a few companies such as water and sewage, as well as networks and grids of railways, gas and electricity sectors (Kirkpatrick *et al.*, 2006;

Sloman and Wride, 2009). For the proper implementation of this mechanism, independent or quasi-independent sectoral regulatory bodies should be established, rather than having direct regulation by government departments (Zhang *et al*, 2008). Braeutigam and Panzar (1993) indicate that particular systems have been adopted by regulatory bodies to regulate monopolies, such as rate-of-return and price cap systems.

Rate-of-return regulation is a system based on the idea that monopoly companies should be asked to charge prices that would be prevalent in a competitive market, and which are equal to production costs in addition to a market-determined rate of return on capital. This sort of regulation system was dominant in the US for years. However, this approach has been criticised, since it encourages cost-padding; hence, it could adversely affect the efficiency of monopoly enterprises. Therefore, since other countries have launched monopoly regulations, especially subsequent to the privatisation of nationalised companies, most of them have adopted price-cap regulation systems which are seen as providing better incentives for enterprises to improve the efficiency on the one hand and the protection of consumers from the negative results of monopolies on the other.

Price cap regulation is a system that regulates monopoly companies' prices according to the price cap index that reflects the rate of inflation in the economy, the ability of the operator to gain efficiencies relative to the average firm in the economy, and the inflation in the operator's input prices relative to the average firm in the economy. Therefore, it seems clear that the regulatory policy is not simple, as price regulation techniques in monopoly sectors aim to achieve multiple objectives such as permitting equitable returns for investors, guaranteeing fair prices for consumers, and providing incentives to private enterprises to reduce costs. These diverse objectives are complicated and difficult to achieve, and thus require independent and efficient regulatory agencies that may be unavailable, especially in many developing countries (Khemani, 1999; Parker and Kirkpatrick, 2005; Beghetto, 2008). In practice, while developed countries were able to create adequate regulatory agencies to promote competition and consumer protection, in developing countries markets seem to be underdeveloped, competition less effective and consumers not well protected (DRPAD, 2001; Pollitt, 1995; Newbery, 2001; Wallsten, 2001). In this

context, Fernandez *et al.* (1999) indicate that privatisation of infrastructure projects in developing countries has led to increased costs, low productivity and high prices. Parker and Kirkpatrick (2005) suggest that such disappointing results may be due to the lack of independence of the regulatory agencies and poor administrative and institutional capability in many developing countries. Thus, it seems clear that protecting the consumer's welfare in developing countries, especially in non-competitive sectors, is a complicated issue and requires strong regulatory bodies.

Despite the importance of promoting competition through the issuance of necessary laws and creation of regulatory agencies, the establishment of some independent agencies called Ombudsmen may play a key role in ensuring the quality of goods and services by receiving, investigating and mediating complaints from sector agents and customers (Saravia, 2006). Ombudsmen are important channels for direct communication with consumers; they have the advantage of being able to find quick solutions for many problems, especially minor problems, which are often important to consumers but may be ignored in large enterprises. Thus, these contacts will protect consumers on the one hand, and help enterprises to improve the quality of goods and services supplied on the other (Theien, 2006). In fact, ombudsmen's offices are effective mechanisms in different sectors in many developed and developing countries alike. In Brazil, for example, Saravia (2006) indicates that there are many effective national agencies, namely the National Agency for Electricity (ANEEL), for Telecommunications (ANATEL), for Food and Drugs (ANVISA), for Health Insurance (ANS), for Land Transportation (ANTT), for Water Transportation (ANTAQ), and for Air Transportation (ANAC). Moreover, in developed countries, these agencies play a significant role in protecting consumers and ensuring their access to high-quality services. In the UK, for example, there are many of these agencies in various sectors, such as the Office of the Telecommunications Ombudsman (Otelio). The task of this office is to sort out disagreements between public communications providers and consumers using their services. As an independent office, its service is provided for free, and it has been approved by the UK communications regulator, Ofcom, as a redress scheme in the communications sector. This office deals with around 300 companies in the UK, and finds solutions to consumer complaints relating to these companies. Annual reports indicate that more

than 100,000 complaints were handled annually during 2007-2010, and such complaints were about different issues such as problems related to the quality of service, financial problems, and others. This means that this office plays an important role in finding quick and satisfactory solutions to the problems of consumers through direct contact with companies, and without the need to convey the cases to the regulatory agency, except in necessary cases (Otelo, 2010). It should be noted that Otelo is just a simple example, and there are many of these offices and agencies that help in resolving issues and problems between consumers and companies in various fields and sectors. However, the success of such offices depends on the independence of these offices and regulatory agencies.

Therefore, many authors such as Kikeri *et al.* (1997) and Beghetto (2008) suggest that, when privatisation occurs in competitive sectors, governments should create a competitive environment and develop appropriate law to protect competition and thereby protect consumers from high prices and poor quality of goods and services, which may result from monopolistic behaviour. In non-competitive sectors, in developed countries, regulatory bodies and ombudsman agencies play an important role in protecting consumer welfare. In developing countries, however, with a lack of regulatory bodies and low capacity to regulate the monopolies, government should consider privatisation of management arrangements rather than selling the monopolies; at the same time they should develop a market-friendly environment and create an appropriate regulatory framework to be able to sell natural monopolies in the future.

3.2.4 Creating the Appropriate Financial and Economic Environment for the Market Economy

Success in the market economy is based mainly on the appropriateness of the financial and economic environment, where the main philosophy of the free economy prevails in the sense that the competition and the appropriate competitive economic environment are the key factors in the success of a market economy. In this context, many authors such as Hoven and Sziracki (1998), Kikeri and Nellis (2002), Parker and Kirkpatrick (2005), and Nellis (2007) believe that providing a competitive environment, particularly in the transitional countries, is a prerequisite for the success

of privatisation or transformation of the market economy, and achieving economic efficiency is the main objective of this policy.

At the outset, it should be noted that, after decades of privatisation experience, there is still a debate about the importance of competition and the transfer of ownership *per se*. Despite the extensive evidence of the effect of privatisation and change of ownership on efficiency, many authors such as Tandon (1995), Pinto *et al.* (1993), Carlin *et al.* (1995) and Newberry (1999) argue that these positive results occurred because privatisation is often a part of larger set of reform policies including liberalisation and competition; thus, they believe that exposure to competition is the main reason to increase efficiency rather than a change of ownership itself. Therefore, they suggest that competition is more important than ownership change in bringing about efficiency gains.

In contrast, many authors such as Kikeri and Nellis (2002) argue that, if competition and market reform are so effective by themselves, it is odd that they are rarely successful without a change of ownership. In fact, the poor experience of reforms of SOEs in the 1970s and 1980s confirms the problems and poor results of reforms without ownership change. In this context, Nellis and Shirley (1991), for example, display many attempts to improve SOEs' performance, and conclude that experiences have proved that, despite intensive and various efforts to introduce competition and other reforms, state enterprises have proved stubbornly resistant to change. These disappointing results did not occur because the problem had not been diagnosed or solutions were unknown but because, in many cases, governments were incapable or unwilling to apply all the essential aspects of reforms. Even in exceptional cases where the performance of SOEs has improved, in China for example, reforms did not continue and backsliding occurred, typically as a result of political interference (World Bank, 1995 b; Majumdar, 1998; Shirley and Xu, 2001).

Kikeri and Nellis (2002) explain that governments would not put pressure on SOEs, especially in conditions of financial hardship or bankruptcy, and therefore would not allow them to exit the market; instead, easy access to the budget continued to resolve financial problems and to cover losses of SOEs. In many cases, even where direct financial subsidies were reduced, they were always replaced by indirect methods, such

as concessionary credits from the banking sector, which was owned by the state. In addition, indirect support arrived through a variety of channels, such as postponement of payments of taxes and custom duties, and exemptions in some cases. It seems, therefore, clear that subsidies provided by governments and the absence of the threat of bankruptcy to protect SOEs from having to exit the business could be the main reasons for the disappointing results of those reforms.

Furthermore, in an empirical study, Shirley and Walsh (2000) analysed more than 50 empirical studies covering various sectors and countries in an attempt to define the relationship between competition and change of ownership. They found greater ambiguity about the advantages of private ownership in the theoretical literature than in the empirical studies. Most of the empirical studies conclude that privatised and private enterprises perform better than those owned by state.

Therefore, it seems clear from the difficulties facing the proper reform of public enterprises and the significant practical evidence on privatisation that ownership change is very important, as it is essential to make competition work. In addition, a competitive environment is also the main condition for privatised and private companies to perform efficiently. Havrylyshyn and McGettigan (1999) indicate that, in the market economy, whether in theory or in practice, private ownership advantages come from the private sector's attempts to maximise profits, subject to a competitive environment. In other words, the privatisation policy achieves its desired objectives when competition is promoted. Therefore, the issue is not privatisation versus competition, because privatisation and pro-competition strategies are complementary to each other; competition is not only satisfactory but also a necessary condition for effective and efficient privatisation.

In the developed economies that have long experience of the private sector, promoting or creating a competitive environment is expected to be less complicated than in many developing countries and transitional economies (Desha, 1991, Katz and Owen, 1995; World Bank, 1996; Dabrowski, 1996; Havrylyshyn and McGettigan, 1999). This difference has several causes, such as the size of the public sector and its role in the economy. For example, in industrialised economies, the public sector contribution did not exceed 15% of the output, while in many other countries, especially transitional

countries, its contribution had reached approximately 90% (Desha, 1991). In addition, many developing and transitional economies adopted the policy of central planning (centralisation). That means that investment, trade and prices were restricted in such countries. These conditions resulted in weak private sector development, non-attractiveness to foreign investment, ineffectiveness of banking sector and the absence or weakness of financial markets. Accordingly, in this situation divesting SOEs is only part of the broad concept of privatisation. Therefore, creating an appropriate financial and economic environment as a prerequisite to privatisation requires further arrangements and policies in such economies. In other words, trade and price liberalisation, developing policies to encourage both domestic and foreign investments, reforming the banking sector, establishing an organised stock market, as well as setting necessary market economy laws such as protection of property rights laws; these are essential requirements for encouraging the private investment, developing the private sector and, hence, creating a competitive environment for successful privatisation (Desha, 1991; Kikeri *et al.*, 1997; Nellis, 2007).

The following sections provide further and detailed discussion on the arrangements necessary for the development a proper financial and economic environment for an efficient and effective privatisation programme.

3.2.4.1 Market liberalisation

In conjunction with privatisation of SOEs, monetary and economic strategies and policies that will open and liberalise the market are necessary for the development of a dynamic and competitive private sector. In competitive sectors, these involve all arrangements to remove entry barriers such as techniques and procedures for simplifying the registration process and obtaining licenses to operate the business; liberalising trade by removing import and export restrictions and opening up the market would certainly encourage both domestic and foreign investors to contribute to economic activities (DRPAD, 2001; Beghetto, 2008). Removal of entry obstacles is essential in transitional economies, where historically the public sector dominated all sectors in the market and where serious restrictions on the participation and entry of private investors existed. In this context, D'Souza *et al.* (2005) suggest that one of the most important potential sources of post-privatisation performance improvements is

the existence of competition pressure, be it a domestic product-market competition by adopting policies and establishing institutions to remove obstacles of entry and ensure more participation by the private sector, or an international product-market competition by adopting monetary and commercial policies to liberalise foreign trade such as unifying the exchange rate, removing limitations on international movements of capital, encouraging foreign investment, removing restrictions on imports and exports and providing all administrative and institutional facilities required for this purpose. Moreover, the World Bank (1995b) and Gwartney *et al.* (2001) indicate that the opening-up of trade leads to increased efficiency and productivity of privatised enterprises due to incentives brought by the international competition. The World Bank (1995b) further argues and propagates that the most effective privatisation programs or financial and economic reforms involved the liberalisation of international trade. Furthermore, Kikeri and Nellis (2002) indicate that, in Poland for example, although most small enterprises were privatised quickly, large enterprises encountered some problems initially, due to the inability or unwillingness of the private investors. However, several policies strongly encouraged the foreign and domestic private investors, and hence competition increased in all sectors of the economy in Poland. Therefore, when it was finally decided to privatise the larger companies, the market was already more competitive, which made the process easier and led to positive results. Moreover, success has been achieved in China mainly by opening the door for the participation of private companies and foreign direct investment. These companies have contributed to the promotion of competition and thereby increased the efficiency of the new companies and privatised ones alike.

Desha (1991) suggests that one cannot expect an effective trade liberalisation process and any encouragement for investors if the exchange rate is constrained. He stresses that the exchange rate should be determined by the forces of supply and demand in the market, rather than by government decisions. Deregulating the exchange rate makes the currency value close to the market price, which represents the real value of local currency against other currencies. This is very important in evaluating the goods and services with their real prices, reflecting the scarcity of economic resources, and thus leading to efficient use of resources on the one hand, and encouraging trade and investment on the other (Dabrowski, 1996). Moreover, the exchange rate deregulation

policy eliminates black markets, thus creating a stable investment environment through the possibility of converting money by formal channels such as banks and exchange companies (Desha, 1991; Dabrowski, 1996).

It seems, therefore, clear that monetary and commercial policies for trade liberalisation and the removal of entry barriers are very important in creating a proper investment environment for a market economy. However, further policies or reforms are much needed such as deregulation of exchange rates to make them more effective, especially in countries that had adopted policies of central planning.

3.2.4.2 Deregulation of Prices

The price deregulation policy is a key step that should be taken in the process of transition to a market economy (Desha, 1991; Dabrowski, 1996; Hoven and Sziracki, 1998; Kikeri and Nellis, 2002; Nellis, 2007). It is needed to encourage the private investors and create a competitive investment environment to ensure the efficient allocation of resources (Dabrowski, 1996).

Dabrowski (1996) suggests that the importance of this policy derives from the need to eliminate price distortions produced by the policies of price subsidies and price restriction in many countries, especially those that were seeking to achieve social objectives at the expense of economic goals. Moreover, he indicates that the policy of deregulating prices would reduce subsidies and tax exemptions, which is a preliminary condition for eliminating the budget deficit on the one hand, and increasing the opportunity to create a competitive business environment in the economy on the other. Furthermore, a free price system set by market forces (demand and supply) is not only an essential element of real competition, but also has a significant effect in stimulating the private sector and increasing its willingness and capability to invest and compete in the market (Dabrowski, 1996; Kikeri and Nellis, 2002). Gupta *et al.* (1999) indicate that some may criticise this policy on the pretext that it may negatively affect consumer welfare, in that deregulating prices of goods and services, particularly subsidised ones, will increase prices in the market; consequently consumers who are benefiting from the subsidy will be affected. In other words, the living standards of poor segments of society, who are supposed to be beneficiaries of the subsidies, will be adversely affected as a result of higher prices

and lower subsidies. In response to this argument, they believe that, in many developing countries with weak regulatory bodies and the presence of corruption, the access of poor segments to these products is limited in reality, and thus the real beneficiaries are the wealthy class. Moreover, there are several options that could be employed to resolve this issue; the first option is to reduce the subsidies gradually to give consumers time to adjust, while the second is to provide limited subsidies such as food stamps; another option is to use cash transfers instead of price reductions. The most important point is that, in any case of subsidies mentioned above, social benefits must be dedicated only to the poor in society (Gupta *et al.*, 1999).

In addition, Dabrowski (1996) indicates that, the time for the implementation of the price deregulation policy is extremely important, as experience confirms that it should be at the very beginning of the transition process. He explains that any delay in the deregulation process creates inflationary expectations, hence adversely affecting the stability of the market, because price deregulation is usually accompanied by a rise in prices. In fact, this is what happened in Ukraine in 1994. In this context, Desha (1991) and Havrylyshyn and McGettigan (1999) stress that economic stability is a prerequisite for the development and prosperity of the private sector. It is generally accepted that variable inflation rates adversely affect the economy because an unstable environment or an environment of uncertainty creates a lot of problems, whether in operation or in the process of making investment decisions, which certainly have a negative effect on the growth and development of the private sector. Moreover, high inflation rates are usually accompanied by a rise in real interest rates, which means adding costs to private sector investment, specifically increasing financing costs; therefore, high rates of inflation negatively influence the expansion of the private sector and the efficiency of resource allocation. Furthermore, exchange rate fluctuations, which are usually accompanied by high rates of inflation, impact on foreign trade as well as on foreign investment, and may hence be an impediment to competition in the market (Havrylyshyn and McGettigan, 1999). Therefore, it seems clear that governments planning to privatise their enterprises and move to a market economy should make appropriate fiscal arrangements to deregulate prices and reduce subsidies and exemptions; otherwise these could be obstacles to privatisation and private sector development.

3.2.4.3 Enforcement of hard budget constraints

Hard budget constraints play an important role in encouraging private investors to contribute to economic activities, thereby enhancing competition and efficiency in the market (Kikeri *et al*, 1997; Havrylyshyn and McGettigan, 1999; Parker & Kirkpatrick, 2005; Nellis, 2007). However, in the literature the soft budget is considered as one of the main causes of inefficient SOEs, because it reduces the incentives of managers and thus adversely affects the performance.

Soft budgets are represented in the subsidies provided by the state to cover budget deficits of loss-making companies to ensure their survival in the market. These subsidies could take several forms such as direct subsidy to budgets, provision of credit on concessional terms by the state or banks, or tax exemptions. Kikeri and Nellis (2002) mention that, as removal of entry barriers is important, freedom to exit from the market also enhances competition. Since allowing closure and exit from the market is obvious proof of ineffective management, most governments around the world have proved unwilling to allow even clearly non-viable companies to fail. Instead, they continue to provide subsidies and financial support for these companies, even when they are included in the privatisation portfolio. In several early attempts at privatisation, such as in Turkey for instance, loss-making companies in the privatisation portfolio continued to be subsidised and survived, leading to continued inefficiencies and fiscal drain. This could adversely affect the sales process and cause more destruction of assets on the one hand, and affect the willingness and ability of investors in the whole sector, on the other, as providing these subsidies for some enterprises means protecting them from bankruptcy, in contrast to private companies in the same sector, who are exposed to this threat. In addition, this financial support and the subsidies provided by public banks could affect the funds that may contribute to the development of the private sector (Kikeri and Nellis, 2002). Pinto (1993) indicates that, in contrast, an effective exit system and hard budget constraints are important factors in the success of the privatisation process in many countries such as Poland. It seems, hence, clear that these policies could play a significant role in resolving some financial problems as well as encouraging the private investors to participate in the privatisation process.

Moreover, many contenders such as Kikeri and Nellis (2002) and Cull *et al.* (2001) indicate that reforming or privatising the banking sector could be one of the effective solutions to addressing the problem of excessive subsidies. In other words, the reform of the banking sector may be an important factor in the success of privatisation, as this procedure would lead to the elimination of excessive subsidies that were usually provided for public companies or recently privatised companies; these subsidies in turn adversely affect the performance of companies and hinder a competitive business environment.

Kikeri and Nellis (2002) believe that poor performance by newly privatised companies in many countries such as the former Soviet Union countries, the Czech Republic and Slovakia could partly have resulted from the adoption of the voucher privatisation method to privatise their public sector institutions, as well as being due to the inefficiency of the new managers of these enterprises. However, they suggest that the main reason for this failure is the weakness of the financial sector reforms, which were supposed to be a pressure tool on new managers to follow new appropriate strategies to improve the performance and efficiency of the privatised institutions, or at least make way for other more efficient managers.

In the same context, Cull *et al.* (2001) point out that the Czech Republic could be a clear example of the importance of reforming the banking sector. In the 1990s, the state was the dominant actor in the banking sector, and pursued a policy of granting loans and financial services for newly privatised companies, even for the weak and loss-making companies. This procedure led to the survival of these enterprises in spite of their inefficiency, and thus negatively impacted on the competitive environment in the economy, which is one of the most important conditions for successful privatisation and the transition to a market economy; this policy also led to continuing corruption and theft by corrupt managers. As a result, the state has failed to improve the companies on the one hand, and dramatically affected the financial capacity of the banking sector on the other.

Conversely, in many other experiments, such as in Poland, Hungary and Estonia, the adoption of the policy of reforming and privatising the banking sector early in the

process of transformation was the major reason for the success of privatisation in those countries (Kikeri and Nellis, 2002).

It seems clear, therefore, that financial sector reform and the creation of a competitive commercially-orientated banking system is an essential factor in the success of privatisation and the transition to the market economy.

3.2.4.4 Organised stock market

An organised stock market is one of the important conditions for the privatisation process to achieve positive outcomes. An organised stock market is considered an effective tool to control and monitor managers and encourage them to improve performance, and thus increase the efficiency of private enterprises (Levin, 2004), which is the main objective of privatisation.

It is a fact that active capital markets play an important role in allocating savings and attracting local and foreign investments through three functions: reduction of liquidity risk, provision of the necessary information for investment, and risk diversification. These three functions thus help to stimulate the private sector, provide finance for its development, and support its ability to compete (McLindon, 1996; Levin, 2004). Furthermore, these markets accelerate the privatisation process itself through the sale of public enterprise shares. This is considered as one of the most desirable ways politically, socially and economically, since it helps to expand the ownership base and increases sales proceeds (Megginson and Netter, 2003; Lieberman and Fergusson, 1998). One can argue that, in developing and emerging economies, stock markets are not expected to play a significant role in a privatisation process and transition to the market economy as they are often underdeveloped or weak (Claessens *et al*, 2000). Many studies, however, have proved that the continuity of SOEs privatisation could be an important source of stock market development, albeit rudimentary (see, for example, Megginson and Boutchkova, 2000; Boubakri and Hamza, 2007; Bortolotti *et al.*, 2006; Perotti and Oijen 2001; Tanko, 2004). In this context, McLindon (1996), Lieberman and Fergusson (1998) and Boubakri and Hamza (2007) indicate that there are several conditions that must be provided to strengthen stock markets and increase their ability to play an important role to foster the privatisation process and develop the private sector, such as providing an appropriate legal and regulatory framework,

and developing an adequate trading infrastructure. It seems, therefore, clear that there is a direct correlation between the development of financial markets and privatisation objectives.

As mentioned earlier, in the property rights theory, the privatisation programme is preferred because of the ability of private owners to transfer property rights as the transferability of property rights could be a great tool to monitor and improve an enterprise's performance. Many authors such as Davis (1971) and Abu Shair (1994) suggest that this tool is an important difference between private ownership and public ownership. In SOEs, taxpayers are all involved in the ownership, and there is no way for any owner to withdraw from public ownership. This means that, even if owners are not satisfied with the performance of public enterprises, they are not able to express the dissatisfaction through the sale of shares and ownership. Thus, managers in state-owned enterprises are not threatened by this kind of pressure. Therefore, it seems clear that the absence of this mechanism may lead to poor performance by managers and workers and, hence, to inefficient state-owned enterprises. In private enterprises, however, the poor performance of management and workers will be reflected in the value of revenue and profits and then in the share prices of these enterprises in the stock exchange markets. This is because poor performance and declining profits in private enterprises will definitely generate the desire of owners to sell their shares in these enterprises. Therefore, selling shares and increasing their supply in the stock markets is a technique for monitoring the performance and behaviour of management on the one hand, and a tool of pressure on managers to improve performance and thereby increase profits and efficiency of the enterprises they manage on the other hand (Lieberman and Fergusson, 1998). Thus, it seems clear that a stock market plays a significant role, according to this philosophy, and it could be a prerequisite for improving the performance and efficiency of private enterprises, which is the main objective of the privatisation programme.

Furthermore, stock markets play a prominent role in corporate governance by forcing companies to disclose all information about their performance, as one of the requirements for listing on the market, and making it available to all shareholders and investors (Beak and Levin, 2004). Many authors such as Stiglitz and Weiss (1983), Levin (2004) and Levin and Demirguc-Kunt (2008) point out that the information

provided by stock markets may be costly for the shareholders or investors. In other words, without financial intermediaries and stock markets, investors face a high cost in assessing the company's performance, managers' competence, and the economic conditions surrounding companies. Therefore, it seems clear that stock markets play an important role in motivating managers to improve the performance of their companies, and at the same time encourage investors to contribute capital to these institutions, thus increasing their ability to develop and compete in the economy.

Due to the absence of organised and active stock markets, especially in developing and transitional countries, many governments have been compelled to adopt specific methods of privatisation, which might not lead to an improvement in performance and efficiency of privatised enterprises in particular due to the absence of an efficient stock market (Lieberman and Fergusson, 1998; Hare and Muravyev, 2003). In Russia, for example, the stock market has not played any role in the privatisation and transition to a market economy; the government has adopted specific methods of privatisation such as privatisation for workers and management and the mass privatisation approach, which distributes vouchers to all citizens free of charge or at very low prices, making them all owners of SOEs. In this experiment, it should be mentioned that these methods have many disadvantages, which have negatively affected privatisation results. In terms of enterprises owned by the workers and management (insiders), they have been suffering from shortages of capital and technologies required for development. Meanwhile, in enterprises with mass privatisation, the process of monitoring and control of the administration was weak as a result of the large expansion of ownership. Despite the establishment of investment funds, which were originally considered as a potentially important locus of outsider control, their role was limited and they frequently lacked the required expertise (Hare and Muravyev, 2003). However, regardless of the method applied to privatise state-owned enterprises, stock markets will be influenced with regard to their capital, size, and liquidity.

Many empirical studies have proved that privatisation transactions develop stock markets. For example, Megginson and Bouchkova (2000) study the effect of privatisation on stock market development, and they conclude that, although privatisation programmes have considerably increased the stock market capitalisation

and the number of shareholders in many countries, some methods of privatisation such as share issue privatisations (SIPs) have made more significant contributions to stock market development than others. However, the sample of this study was confined to countries with liquid markets. In another study on emerging markets with undeveloped stock markets, Perotti and Oijen (2001) investigate the relationship between privatisation, political risk and stock market development. In contrast to the previous study, they conclude that, in emerging countries, although SIPs have not been adopted widely due to the absence or the lack of organised stock markets, the progress of privatisation contributes indirectly to stock market development through the resolution of political risk. They explain that a continued privatisation procedure represents an important political test that regularly reduces uncertainty over the political commitment to a market-oriented policy and private property rights, which helps to encourage investors to trade in stock markets by contributing to listed companies as well as creating new ones.

Furthermore, many other studies stress that privatisation can result in positive impacts on the stock markets, but these impacts are often conditional on the availability of certain conditions. For example, Boubakri and Hamza (2007) investigate the impact of privatisation transactions on stock market development with a huge sample consisting of 37 emerging markets and 24 developed economies. They find that the privatisation has a positive impact on the development of stock markets. However, they find that, for this positive impact to occur, several conditions needed to put in place such as an appropriate legal framework and stock market regulation. Similarly, Kogut and Spicer (2002) emphasize that the method of privatisation using weak legal and institutional protection for minority shareholders was an obstacle to the development of stock market in Russia. They explain that, in the absence of an appropriate legal framework and institutional mechanisms of state regulation and trust, even those capital markets that emerged in Russia frequently became fields for political contests and economic manipulation; consequently, investors were often discouraged and were unwilling to contribute to these markets' development. For such reasons, many contributors such as McLindon (1996), Lieberman and Fergusson (1998), Boubakri and Hamza (2007) and Naceur *et al.* (2009) suggest that government plans to privatise SOEs and move to a market economy should consider these

conditions to develop stock markets, and hence to achieve the desired objectives of privatisation. According to these authors, these conditions could be described as follows:

- Developing a suitable legal environment that guarantees investor protection so that individuals are willing to invest their wealth in the stock market;
- Creating an appropriate regulatory system and setting clear guidelines for the market in areas such as information disclosure and insider trading;
- Developing an adequate infrastructure of stock markets such as trading, brokers, clearing and settlement agents, registries, depositories, and payment systems to allow effective and prudential operations.

It seems, hence, clear that stock markets could play a significant role in the privatisation process. In addition, in the post-privatisation process, they could still be an important mechanism to improve the efficiency of privatised enterprises, by providing least-cost information needed to govern enterprises, and by providing an appropriate environment to attract investors to contribute to the development of private enterprises. Markets in some developing and transitional countries may be underdeveloped and do not play a significant role at the beginning of privatisation or the transition process. However, with sustained privatisation and provision of some required conditions such as a suitable legal and regulative framework and an adequate stock market infrastructure, markets in such economies would gradually be able to play a prominent role after privatisation as an external governance control.

3.2.5 Appropriate Legal and Regulative Framework

Privatisation programmes differ from one country to another. In many countries, such as emerging or transitional countries, it is the process of transition from a planned economy to a market economy; therefore the implementation of privatisation process requires additional arrangements beyond those required in industrialised countries. One of the most important of these requirements is the creation of a comprehensive legal and regulative framework. This framework should be synchronous with the transformation process and should be appropriate to encourage the private sector, instil confidence among investors and all market participants, and create the

appropriate environment for fair competition. The success of a privatisation policy depends largely on the success of states in creating such frameworks (Lieberman and Fergusson, 1998; Desha, 1991; Kikeri *et al*, 1997; Kikeri and Nellis, 2002; Parker and Kirkpatrick, 2005; Nellis, 2007).

Although the internal relations between law and economic policy are clear, the role of the law may vary from one economic system to another, as, in a market economy, the role of law, in economic life, is completely different from its role in a planned economy. In a planned economy, almost all activities are managed and operated by the government whether directly or indirectly, meaning that the government controls most aspects of economic life; thus, in this kind of regime, the participation of a private sector, if any, is too limited. In this case, it seems clear that almost all parties that deal in the market are state-owned institutions; hence, laws in these economies were originally designed to deal only with these parties (El-Dean, 2002).

Conversely, in the market economy, private economic entities interact and contract together freely in order to achieve their own interests. In other words, enterprises of the private sector dominate the economic activities in the market economy. Therefore, the privatisation in some economies, such as emerging or transitional countries, means changing the economic role of the state and the private sector (El-Dean, 2002). From this standpoint, the creation of a legal framework to deal with new parties and that is suitable for the market economy is an urgent and very important issue. It should be noted that the creation of such structure to support a market economy, in emerging countries, is a complex task and not easily accessible. Such a task includes not only the development, adjustment and abolition of the laws that govern economic activity, but also should include the formation of competent departments responsible for and able to enforce and apply these laws (Nellis, 2007).

Therefore, many authors such as Gray (1993), Nellis (2007) and Parker and Kirkpatrick (2005) stress that this legal framework should be designed to include the following important aspects:

- The definition and protection of property rights, and a clear framework for the exchange of these rights;

- Rules for entry and exit of producers into and from production activities;
- Laws and regulations necessary to monitor the market and the behaviour of parties involved, in order to prevent monopolies and promote competition in the market.
- A capable and impartial public administration to enforce rules and laws enhancing competition in the economy.
- Independent or quasi-independent regulatory agencies, in order to regulate the private natural monopolies.

3.2.5.1 Protection of property rights

An effective arrangement for the protection of private property is an essential element of a legal system of market economy (Gray, 1993; Nellis, 2007; Parker and Kirkpatrick, 2005). Private property merely increases within a legal structure that advocates the sanctity of contracts. The private sector can play its economic role only when property rights are guaranteed. In other words, investors will not invest if their investment is not secure. Therefore, it is not easy to imagine a market economy operating if such rules do not exist (El-Dean, 2002). Similarly, Shirley (1997) suggests that acts and laws guaranteeing property rights play a significant role in reassuring investors that the government will honour its commitments. He stresses that these laws increase the credibility of the transition process. In this context, many studies such as that of the World Bank (1995) conclude that credibility is one of the key factors for successful privatisation. Therefore, it seems clear that the definition and protection of property rights are major conditions for encouraging the private sector to participate and compete in the economy.

3.2.5.2 Competition law

Given that private and privatised companies are expected to work efficiently mainly when they are exposed to competitive pressures, and that efficiency is one of the most important privatisation objectives, a law promoting market competition is therefore necessary (Khemani, 1999; Gray, 1993; Nellis, 2007). The absence of competition would mean that privatisation of SOEs could change enterprise ownership without changing enterprise behaviour. In other words, unless the privatised and private

companies face the pressure of competition from other private sector companies, they can be expected to behave as monopolies.

The problem with monopoly is the monopolist's ability to exploit its position in the market. As the monopolist is dominant in the market, it will seek to maximize profits by increasing prices through its control of the supply in the market. Therefore, it seems clear that the results of monopoly will be a decrease in production, an increase in prices, and the transfer of wealth from consumers to monopolists (Baldwin and Cave, 1999).

To counter the adverseries that may result from monopolistic behaviour, competition should be introduced to the market. Competition means breaking the monopoly of the market by opening the door for producers to enter and exit the market freely; thus, producers will compete with one another in order to maximize their own returns (McKenzie and Lee, 2008). Theoretically, competition is sufficient to ensure greater efficiency and consumer welfare; in the real market, however, the requirements for perfect competition may be unattainable. For this reason, under the condition of imperfect markets and market failures, the idea of a workable competition has emerged, and competition (or anti-trust) laws are considered an extremely important requirement to create this competition (Dabbah, 2004; El-Dean, 2002).

Competition or antitrust law is the law that seeks to achieve several economic and social objectives such as protection of competition, consumer welfare and economic efficiency by regulating anti-competitive practices in the market (Taylor, 2006; Jones and Sufrin, 2008; UNCTAD, 2010). Competition law, therefore, has three key elements to achieve its main objective. Firstly, it seeks to ban any agreements or practices that could hinder competition among business in the market. These agreements may exist in particular cartels and in oligopolistic industries. Cartel parties might agree on such matters as price-fixing, market-sharing, production-determining, and other acts that could be conducted to increase the profits of individual members by reducing competition. Secondly, it seeks to prevent any company that has gained a dominant position in the market from exploiting this situation in a way that affects competition. In this context, banned practices might include adopting a predatory pricing policy which could result in driving competitors out of the market, refusing to

deal with some consumers and competitors, creating barriers in order to prevent potential competitors from entering the market, and many other acts that could affect competition. Thirdly, it monitors mergers of large companies that might concentrate the market and create dominant positions in the market, thus threatening competition (Monti, 2007; Dabbah, 2004; El-Dean, 2002).

Conversely, many authors argue that countries that compel their economies to be subject to the international competition system through good policies to open up foreign trade do not need competition law, because international competition would assume the task of solving the problems of monopoly. Sachs (1991) stresses that trade liberalisation is the most effective way to instil competition, especially in emerging markets. He explains that foreign trade and foreign companies provide sufficient competition to improve the efficiency of local producers; foreign competition is not only a means of pressure to improve the management in local firms, but also provides techniques that may be useful to promote the efficiency of these companies. Moreover, Gray and Davis (1993) suggest that the open market stimulates local producers to compete to access international markets so as to compensate for the shortcomings in their market share in the sense that, when the markets are characterised by small size, trade liberalisation promotes competition between local companies for the purpose of exporting their products. Furthermore, it is possible to point out that one of the advantages of market liberalisation is that it might be the cheapest way to strengthen competition, particularly in developing countries and emerging markets, which usually suffer from a lack of regulatory capacity and supervisory arrangements for the imposition of competition legislation. In addition, competition law, as a result of some of these considerations, may be undesirable and ineffective in that companies in developing emerging economies are usually large compared with their counterparts in developed countries. This is because the size of the market usually requires the presence of only one company or a small number of companies in each industry. The problem is that the size of these companies is sometimes desirable, because these monopolies and this situation enable companies to withstand foreign competition. Therefore, competition law may not be desirable, because it seeks to dismantle these monopolies, and thus renders local companies unable to survive. It may also be ineffective and unable to remedy the situation of the

market due to the unwillingness of the government to reduce the ability of these companies (Gray and Davis, 1993). In this context, Bork (1993) also argues that competition or antitrust laws can produce unfavourable effects when they diminish competition by protecting unproductive competitors and when legal intervention costs are greater than targeted benefits for consumers.

However, although trade liberalisation is a prerequisite to support competition, it is not a substitute for competition law, for several reasons. An open market and trade liberalisation do not preclude the exercise of anti-competitive business that may arise even between foreign and local companies. Moreover, while there is no doubt that the liberalisation of the market provides a pressure tool to promote competition in sectors in which output is affected by the international market, other sectors such as the services sector, however, may not be greatly affected by the international market; this may make them vulnerable to non-competitive practices, thus harming consumers and the economy (Khemani, 1999; El-Dean, 2002). Furthermore, regarding concerns about the inability of local firms to withstand foreign competition, Hoven and Sziracki (1998) indicate that past experiences have indeed proved, in many countries such as Bulgaria, Hungary and East Germany, that many companies were affected significantly by the cutting of subsidies and opening of the market to external competition, which led them to exit the market. However, this emphasises the need for structural reforms in sync with privatisation programmes, and does not necessarily mean that markets should be closed again or trade restricted. In this context, many studies such as Kuhl (1998), in the case of East Germany, proved that corporate restructuring and the provision of required financial resources and techniques were major causes of the increase in productivity of many domestic industrial companies after privatisation and trade liberalisation. Therefore, it seems clear that the policy of trade liberalisation is a useful tool in privatisation and economic reform, particularly with regard to the promotion of competition to increase the efficiency of domestic firms. However, it cannot be considered a substitute for legislation to protect competition, as these arrangements complement one another. In addition, there is no justification to fear the application of competition law under the pretext of protection of local enterprises from foreign competition, although it is preferable to provide ways

of enhancing and correcting the conditions of these inefficient companies through the provision of financial sources and the technology required to do so.

3.2.5.2.1 Enforcing competition law

The establishment of a competition agency or anti-monopoly office is an urgent need and an integral part of setting up competition law. This agency is expected to have a set of basic functions to ensure efficient application of competition law, such as investigation of some acts that are suspected of violating competition, sentencing and penalties assessment, as well as monitoring the market and conducting studies about conditions and prices prevailing in the market. Moreover, it provides counselling and advice to the government in all aspects of the competitive position in the market, and about the possibility of selling state-owned enterprises during the process of privatisation (El-Dean, 2002; UNCTAD, 2010).

Because of its important and necessary role, the establishment of an effective competition agency is an absolute necessity for the application of competition law, as it could be considered an enforcement policy that achieves the desired targets of the legislation. Therefore, this agency should be characterised by certain qualities as follows (World Bank, 2005; UNCTAD, 2010):

- (i) It should be transparent, independent and impartial;
- (ii) It should have a sufficient number of highly qualified staff, including not only workers and managers at the agency but also numerous specialists in law, economics, accounting and other related fields, who will be linked to the daily activities of this agency;
- (iii) It should be well-funded to be able to attract those experts as well as to avoid possible corruption.

In addition, there are other conditions relating to the law itself, which should include all practices that could affect competition in the market; at the same time, it should be clear and uncomplicated, and thus understood by all parties concerned in the market on the one hand, and applicable by the competition agency on the other (Hildebrand, 2009).

It seems, therefore, that the issue is somewhat difficult for decision-makers, particularly in developing countries and emerging economies, in terms of drafting the law and the establishment of the body responsible for enforcing it, since any weakness in the development of the law or its application may have significant implications for competition in the market. Past experience indicates that, while competition laws in developing countries tend to be as strong as laws in developed countries, competition policy seems to be much less effective (World Bank, 2005).

There are several likely reasons for this. Adopting advanced and complex competition laws in many countries, such as Poland and Hungarian, was the main reason for the failure to achieve the desired targets of the competition policy since a complicated law, which is usually adopted from developed countries, may not be appropriate for conditions in transitional and developing countries, and may also be too complicated for enforcement agencies (El-Dean, 2002). Moreover, in most developing countries, problems lie at the level of the enforcement of competition laws. Although competition agencies in some countries are reasonably vigorous, others appear to be having serious problems, such as lack of resources. Furthermore, competition agencies in many developing countries have suffered from a lack of experts and qualified staff. For example, in 2000, the competition office in Tanzania had only two economists and no lawyers. Also, the anti-monopoly agency in Zambia had only five experts: four economists and one lawyer.

Another reason for the ineffectiveness of competition policies could be the unreliability of the judiciary in protecting competition agencies from political intervention and supporting them in enforcing their rulings. Competition agencies in many developing countries are usually influenced by government interventions; for example, when the authority of monopoly control in Pakistan, in 1998-1999, attempted to take action against cartelisation in the cement market, the government intervened, fixing prices at an acceptable level for firms suspected of being “politically connected firms” (World Bank, 2005). In regard to the judicial system, Khemani (1999) suggests that a special tribunal is usually recommended since this could be a complex area, and judges are not normally versed in dealing with these sorts of problems. Therefore, there should also be the right of appeal. Should the competition agency become captive to certain parties, there would need to be some

provision for private actions to compensate the affected parties. It seems clear therefore that, under such weak conditions, one might not expect to achieve positive results from a competition policy; hence market competition will be negatively affected, meaning that improvement in the efficiency of private and privatised companies is unlikely.

Thus, from the discussion above, it is clear that developing a suitable competition law is one of the main conditions for successful privatisation or transition to the market economy. At the same time, this section has confirmed that many considerations should be taken into account by governments in this regard, such as intelligibility and comprehensiveness of the law, independence of competition agencies, and reliability of the judicial system.

3.2.5.3 Legal framework for an efficient corporate governance structure

Creating an appropriate structure of corporate governance is one of the main conditions for improving a company's performance (OECD, 2004), and it is also a major factor in the success of privatisation in terms of improving the efficiency of the privatised companies, thereby enhancing economic efficiency (Dyck, 2001; Coffee, 2001; Johnson and Shleifer, 2004). Thus, developing the legal framework for an efficient corporate governance structure is a significant issue.

Shleifer and Vishny (1997) and Denis *et al.* (2003) describe corporate governance as the system that deals with the ways in which companies' financiers assure themselves of gaining a return on their investment. Furthermore, John and Senbet (1998) and Slahudin (2008) define corporate governance by its setting; it deals with mechanisms by which company stakeholders (shareholders, creditors, employees, suppliers and other interested parties) use control over company insiders and management to protect their interests. In a more comprehensive definition, OECD (2004) stresses that the concept of corporate governance refers to a set of regulatory, administrative, legal and financial frameworks, which govern the relationship between management and owners (investors and shareholders) and other stakeholders. This concept also includes a structure that demonstrates the company's objectives and control systems over performance.

With regard to the relationship between privatisation and corporate governance, Black *et al.* (2000) point out that supporters of privatisation hoped that the profit incentives which arise from privatisation of public enterprises would revive faltering economies. However, many countries, especially developing and transitional countries, did not achieve the desired revival. They propose that one of the main explanations for the disappointing results of privatisation is the weakness in the framework that should protect companies from possible takeover bids by stakeholders. In this context, Coffee (2001) indicates that, without the creation of a sufficient legal basis, the privatisation may result in private benefits to specific groups through their access to power and control in privatised companies leading to 'crony capitalism'.

In a well-functioning market, there is specialisation in investment and management, as investors offer money to managers with strong investment projects and management ability. All stakeholders such as workers, suppliers and creditors could be considered investors as they all delegate their resources to those in control of a company (Daily *et al.*, 2003; Dyck, 2001). In this case, the main threat to investment and the success of the enterprise will occur when those delegated with decision-making power do not employ that authority to fulfil what was promised - serving the interests of investors and stakeholders - but instead seek to achieve their own benefits. Thus, if there is no credible way of stopping this behaviour by grasping hands, all stakeholders - creditors, suppliers and workers - will refuse to continue providing their resources to companies. Accordingly, companies will be negatively affected in the short run, and economic efficiency will be affected in the long run. Therefore, adopting a good system of corporate governance is a key element for improving economic efficiency (OECD, 2004) and for making privatisation effective, as this system will protect the rights of shareholders and all stakeholders from grasping hands (Dyck, 2001).

The problem of grasping hands might occur in public or private sectors, especially in large firms. Dyck (2001) indicates that, while the problems of grasping hands in the public sector are well-known and are one of the most important reasons and justifications for privatisation of SOEs, the threat of grasping hands in the private sector is less widely recognised.

In this context, Johnson and Shleifer (2004) mention that past experiences, especially in transitional countries, proved that mere privatisation or simple transference of ownership of public sector enterprises to the private sector is not enough; a set of complementary measures should be taken into account, such as stimulating competition in the market, and strengthening the corporate governance system, as privatised firms with weak governance always generate a weak performance and a lot of problems involving the managements. As stated by Johnson and Shleifer (2004), in the Czech Republic, for example, managements in newly privatised firms colluded with the managers of investment funds in asset-stripping and embezzlement of funds in these companies.

Many authors, such as Coffee (2001) and OECD (2004), therefore believe that, for privatisation to be efficient, governments must establish an appropriate corporate governance system to prevent possible problems caused by insiders. In this context it should be noted that there are two types of insiders in private sector companies. Managers could be insiders or grasping hands, especially in Anglo-Saxon countries such as the US and the UK. In such economies, managers often control resources or companies, even when they have small ownership stakes. In the second case, shareholders could be insiders. This situation has been illustrated in continental European countries and developing countries, where a few shareholders hold a large percentage of the company's shares and are thus able to control the company, making decisions at the expense of other shareholders and stakeholders (Ooghe and Vuyst, 2001).

There are, therefore, many approaches and models for corporate governance, such as the Anglo-Saxon model and continental European model (Cuervo, 2002). The first model, which is mainly adopted in the Anglo-Saxon countries, is also known as a shareholder model, while the latter, which has been adopted in many countries such as Germany and the countries of Latin America, is called stakeholders models for incorporating the interests of many stakeholders beyond shareholders (Ooghe and Vuyst, 2001).

These models are different in many aspects. For example, the Anglo-Saxon model calls for a reduction in the concentration of shareholders, and giving more power to

the managers in the decision-making process to achieve the objectives of the company, which include maximising the profits, and thus increasing the share price in the stock markets. In the second model, the main idea is to separate the management from the ownership and allow a few shareholders to hold a large percentage of shares under the pretext that this is an effective way to govern the management in the private sector.

The differences between these models may be attributed to many factors. Perhaps the most important one is the liquidity of the stock market in the country that is adopting the model of corporate governance. For example, countries that adopt the Anglo-Saxon model usually have developed liquid markets. Therefore, the shareholders can take the necessary action when they are not satisfied with the management's performance or when they receive information or negative signals; this action may be either by invitation to the general meeting of shareholders, or even by selling their shares in the market. This would be a tool of pressure on the management to improve the performance of the company. However, this model does not fit countries with undeveloped stock markets, where a widely distributed ownership could be an impediment to the corporate governance (Ooghe and Vuyst, 2001; Dyck, 2001).

The OECD (2004) therefore believes that there is no particular model of good corporate governance. However, there are many common elements that define the methods of good corporate governance. It is possible to say that the most important of these elements meet in the international principles of corporate governance, which was established by the OECD, taking advantage of the many contributions of member and non-member countries, and international institutions such as the IMF, the World Bank and others. These principles aim to assist governments in their efforts to assess and improve legal, institutional, regulatory frameworks in regard to the corporate governance issue. In addition, these principles provide guidelines and suggestions for stock exchanges, investors, companies and other parties that play a role in the development of good corporate governance.

OECD (2004) and Dyck (2001) believe that a corporate governance system is one of the key elements in improving economic efficiency; it includes a set of relations between the executive management of a company and its board of directors, its

shareholders, and other interested parties and stakeholders. Moreover, the approach of corporate governance provides the structure that defines the company's objectives and the means to achieve those goals, and an effective monitoring tool to improve efficiency in these companies. This corporate governance, to be effective, depends on many parties, while governments define the legal and institutional framework for corporate governance, the degree of commitment of companies applying principles of corporate governance is an important factor in the success of the system, and to gain benefits from its advantages and improve economic efficiency (Coffee, 2001; OECD; 2004).

As mentioned above, there may be no single model of corporate governance, but there are many common elements, and the principles formulated by the OECD in 1999 and amended in 2004 combine these elements and accommodate all existing models. The principles cover five issues: the rights of shareholders, the equitable treatment of shareholders, the role of stakeholders, disclosure and transparency, and the responsibilities of the board.

(i) Rights of shareholders

The framework of corporate governance should protect and facilitate the exercising of rights for shareholders by ensuring many rights, including the following. The first covers the basic rights of shareholders such as secure methods of registration, conveyance or transfer of shares, obtaining the required information about the company in a timely manner, participating and voting at general meetings of shareholders, electing and removing members of the board of directors, and obtaining shares in the company's profits.

Second, it is important to ensure the right of shareholders to participate in and gain access to sufficient information to make decisions regarding fundamental changes in the company such as amendments to the statutes, articles of incorporation, or other basic documents of the company, as well as any other issues related to the offering of additional shares, or unusual financial transactions that might result in the sale of the company.

Third, shareholders should have the opportunity to participate effectively and vote at general meetings of shareholders through the provision of adequate information on the date, place and agenda for general meetings, taking into account the provision of information in a timely manner, especially with regard to topics that require decisions in the meetings. It might also be necessary to give shareholders the opportunity to add some topics to the agenda, in an organised manner, and allow shareholders to entrust their representatives to attend meetings and vote on their behalf.

(ii) The equitable treatment of shareholders

The framework of corporate governance should guarantee equitable dealings with all shareholders, including minority and foreign shareholders. Every shareholder should have the opportunity of effective redress for violation of his/her rights. Therefore, under this principle all shareholders who belong to the same class should be treated in an equivalent manner; shareholders - within each class - should have the same right to vote and the same opportunity to obtain the necessary information on the issues for a vote. Furthermore, all processes and procedures relating to general meetings of shareholders should be clear to all of them without exception. Secondly, all share-trading processes should be carried out with full transparency and disclosure. Thirdly, members of the board and key executives should be asked to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material concern in any business or matter affecting the company, and insider trading and abusive self-dealing should be banned. Fourthly, minority shareholders should be protected from abusive behaviour by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have efficient means of redress.

(iii) The role of stakeholders in corporate governance

The rights of stakeholders established either by law or mutual agreements should be recognised by the corporate governance framework, and co-operation between corporations and stakeholders should be encouraged, especially in creating wealth, jobs, and the sustainability of financially sound companies. According to this principle, firstly, stakeholders' rights, which are recognized by law or by mutual agreements, are to be respected; thus they should have the opportunity of effective redress for violation of their rights. Secondly, the corporate governance framework

should allow the existence of mechanisms for the participation of employees in order to improve performance; thus they should have the opportunity to obtain sufficient and reliable information in a timely and regular manner. Thirdly, employees, whether individually or through their representative bodies, should be able to communicate their concerns about illegal or unethical practices to the board, freely and without fear for their rights. Fourthly, in regard to creditors, the framework of corporate governance should be complemented by an effective and efficient insolvency framework and by effective enforcement of creditor rights.

(iv) Disclosure and transparency

The framework of corporate governance should guarantee that timely and accurate disclosure is made on all issues regarding the company, including the financial condition, performance, ownership, and governance of the company. First, disclosure should include the most important information, such as the financial and operating results of the company, company objectives, major share ownership, and voting rights. Moreover, it should include information about members of the board and key executives, including information about their qualifications, salaries, and benefits granted to them. Furthermore, material matters relating to employees and other stakeholders, structures and corporate governance policies should be disclosed.

Second, information should be prepared and disclosed in accordance with high-quality standards of accounting, and financial and non-financial disclosure should also meet the requirements of the financial audit. Moreover, an independent, competent and qualified auditor should carry out an annual audit to provide external and objective assurance to the board and shareholders that the financial reports fairly represent the company's situation. Third, channels of information dissemination should ensure that access to it is equal, timely and at acceptable cost to users.

(v) The responsibilities of the board

The framework of corporate governance should guarantee a company strategic guidance, effective monitoring of management by the board, and the accountability of the board to the corporation and the shareholders. This principle suggests, firstly, that members of the board should act in good faith and with due diligence to achieve the

interests of the company and shareholders. Moreover, as their decisions could affect different groups of stakeholders, they should deal fairly with all stakeholders, and take into account all stakeholders' interests.

Secondly, the board should carry out several functions such as the following: reviewing and guiding strategy and major corporate plans, risk policy, annual budgets, and business policies; enveloping objectives of the performance; monitoring implementation and company performance; and overseeing capital expenditures and other key functions. Moreover, members of board should select, compensate, monitor and replace, when necessary, key executives of the company. Furthermore, they should deal with any conflict that may occur between the interests of executive management and shareholders, such as misuse of company assets, and should conduct transactions with related parties.

Additionally, they should ensure that accounting and financial reporting systems of the company are effective and impartial, including the independent audit, and that proper systems of control are in place, especially systems for risk management, and financial and operational control in the company. Thirdly, members of the board should have the ability to exercise objective independent rulings on affairs of the company, and they should have sufficient time and ability to commit themselves effectively to their responsibilities. Fourthly, members of the board should have access to accurate, relevant and timely information, to be able to fulfil their responsibilities.

3.2 CONCLUSION

This chapter discussed the privatisation experience and concluded that it has been different around the world, whether in terms of objectives, methods adopted, and outcomes obtained. Several studies proved that, although privatisation in many countries was fruitful, in many experiments, especially in developing and transitional economies, the outcomes were disappointing. This chapter therefore discussed the main requirements for efficient implementation of privatisation to prevent disappointing results, which includes the following: political support; transparency; mitigating the social impacts of privatisation such as reductions in employment and the effects on the quality and prices of products; creating the appropriate financial and

economic environment for the market economy; and creating an appropriate legal and regulative framework to build confidence among private investors, encourage private sector participation, and regulate private sector practices, as well as promoting competition in the market to achieve the desired goals of privatisation and economic transformation policies.

CHAPTER 4

THE LIBYAN ECONOMY AND THE PRIVATISATION PROGRAMME IN LIBYA: AN OVERVIEW

4.1 INTRODUCTION

Before the discovery of oil at the beginning of the 1960s, Libya was one of the world's poorest countries. However, the emergence of oil and the use its revenues, especially in the 1970s, with a significant increase in oil prices, enabled Libya to achieve high growth rates and develop its infrastructure, such as road construction, electricity and water networks, housing, schools, hospitals and others (Faitory, 2004; Shernanna and Elfergani, 2007; Habib, 1975; Fathaly and Abusedra, 1980; Jehaimi, 1992; Makori, 2007).

Many economists contend that the Libyan economy in the pre-oil discovery period could be considered as poor and underdeveloped. However, after the emergence of oil and increasing revenues for the state from this new source, economic planning began to play a key role in guiding the use of these revenues to provide the basis of economic development and growth, and to raise the quality of life of Libyan citizens, who have suffered a great deal of poverty, deprivation, illiteracy and disease (Makori, 2007; Faitory, 2004). As a result, there have been several medium-term economic plans: the first five-year plan covering the period of 1963-1968; the first three-year plan covering the period of 1973 – 1975; the five-year plan covering the period of 1976 – 1980; and then the five-year plan covering the period of 1981-1985. The main objective of the first two plans was to establish the infrastructure, which is the basis of the development agenda in the Libyan economy. The other plans focused on the establishment of industries for the production of goods, so that such industries could compete with imports in many industrial fields (Alzuni, 2003; Shernanna and Elfergani, 2007).

It should be noted that the public sector played a key role in these plans, whether in terms of the establishment or management of these institutions and companies in that period, because of the state's ability to finance such projects through the oil revenues. Importantly, the weak private sector in that period was another factor in the control of

the public sector. Moreover, the transition to socialism at the end of the seventies and early eighties resulted in the state controlling all public sector economic activities such as industry, trade, construction, housing, insurance, banking, transportation and others. In the process, the role of the private sector declined and was limited to the agricultural sector and some small-scale artisanal activities (Tapoli, 2004; Fatory, 2004). Consequently, the state became the main investor and producer of all goods and services in the Libyan economy, thus leading to 'state corporatism'. This is evidenced by the percentage contribution of the state in the volume of investments in economic activities carried out during the 1970s, 1980s and even the early 1990s; this increased, for instance, to as much as 92% of the total investment, while the participation of the private sector was limited to just 8% in 1980s (Tapoli, 2004).

It should be noted that the public sector, as part of late developmentalism, achieved certain successes in the beginning; for instance, it increased the contribution of non-oil sectors to GDP, and established numerous major infrastructure projects in many areas such as electricity, water, communications and transportation; it also established many factories and institutions that provided various goods and services. Importantly, the public sector retained a key role in creating jobs and improving the incomes of individuals (Shukri, 2003; Shernanna and Elfergani, 2006). However, state control over economic activity has also generated many disadvantages which were clearly witnessed in the late 1980s and early 1990s; the public sector faced many problems and difficulties, including inefficient use of economic resources, failure to diversify sources of national income or find a substitute for the oil, mismanagement of these companies, lack of monitoring, surplus labour, continuing losses, the accumulation of debt in local banks, and many other problems (Faresi and Shehouni, 2006; Al Tarhuni, 2003; Fatory, 2004; Makori, 2007). As a result of all these, the public sector has become an increasing burden on the state budget, which relied mainly on oil for revenues in financing its growing deficits (Taboli, 2004; Futaisi, 2005; Alruyati, 2004). Consequently the government, in the late 1980s and early 1990s, began to adopt policies to reduce the role of the public sector in the economy gradually, and to reduce state intervention in economic activities; it began to develop many mechanisms to encourage and stimulate the private sector to increase its role in economic life, along with a policy of privatisation of state-owned companies (Kajiji

and Bait Almal, 2004; Abdussalam, 2006; Shernanna and Elfergani, 2006). These policies were indeed commensurate with the changes that were taking place globally in terms of economic reforms for the liberalisation of economies.

In presenting the developments in Libyan economy, this chapter firstly sets out the historical background of the main characteristics of the Libyan economy and the heavy state presence in the economy; secondly it discusses the role of the public sector in the Libyan economy. The chapter then indicates the rationale for economic liberalisation and the reduction of the role of the state in economic life in Libya; finally, it presents the privatisation experience in Libya and the main related issues.

4.2 DEVELOPMENTS AND TRENDS IN THE LIBYAN ECONOMY

The Libyan economy is characterised by the properties of most developing countries: the economy is open and relatively small in size; income depends on the depleted natural resources; there is a lack of skilled labour; and there is a high rate of population growth (Shamia, 2007).

The huge investments that were implemented over more than three decades were aimed at achieving high growth rates in productive economic activities and creating a production base that would help to diversify national income sources and reduce the dependence on oil. However, from the data available on the results of these huge investments, which amounted to about L.D 40 billion during the period 1970 to 2000, one can observe shortcomings in attempts to achieve the targets of all the socio-economic development plans and successive development budgets. The most important negative consequence of development attempts is the failure to diversify sources of income and increase the contribution of the productive sectors such as industry and agriculture to the GDP despite the acquisition of a significant proportion of the total development expenditure. In addition, the emergence of many other problems, such as the marginalisation of the role of the private sector and the full control of the public sector in economic activity, has negatively affected the efficiency of state enterprises. There have also been heavy burdens on the state as result of the dominance of the public sector, particularly with regard to issues of funding and implementation of development projects, and other financial and administrative problems (Faresi and Shehoumi, 2006; Abdussalam, 2006). In this context, it is

possible to display the main features and key results of the implementation of development plans, during a period of more than three decades, in a range of key points as follows:

4.2.1 Trends in the Sectoral Distribution in the Libyan Economy

Despite the efforts and the amounts allocated to development plans for non-oil productive sectors to achieve certain goals such as diversifying the economic structure and liberating the Libyan economy from the dominance of the oil sector, the revenue earned by the oil sector still represents the largest contribution to gross domestic product in the Libyan economy (Faresi and Shehoumi, 2006). As mentioned above, it seems evident that the most important goal of the development plans and investment policies in Libya was to diversify the structure of the Libyan economy. Available data on the distribution of capital formation or allocations to the sectors and economic activities during the period 1973-2000 illustrate the extent to which development plans focused on the development of basic production sectors such as agriculture and industry; these sectors absorbed about 25% of the total allocation, which amounted in total to around LD 40 billion during the period 1970 to 2000, and the main focus on these sectors was within the development plans in the period of 1973-1985 (Libyan National Corporation for Information and Documentation, 1999, 2002). However, the oil sector still dominates the structure of economic activity as a higher proportion of the composition of GDP, as is evident in the Tables 4.1 and 4.2, despite the decline in its contribution for some years and which is attributable primarily to the decline in oil prices. It seems clear from the data that the contribution of the basic production sectors to the GDP was very modest. The agriculture sector, for example, recorded its highest contribution to the GDP in 1995, amounting to 8.7%, but this decreased again to about 2.8% in 2005. Therefore, it seems clear that the contribution of the agricultural sector to the economy was weak, despite the volume of investments been allocated to this sector through various plans and programmes for development. Some specialists such as Shamia (2007) and Makori (2007) point out that this modest contribution may be due to a number of reasons such as water scarcity and lack of arable land. Meanwhile, the industry sector recorded the highest contribution to the GDP in 1995, amounting to 7 %, and then decreased again to about 1.4% in 2005. Makori (2007) suggests that this low contribution from this vital sector, despite its

large share of the total investment, may be due to several factors such as the nature of the local market and the failure to utilise available production capacity in an efficient manner, which negatively impacted on production costs.

Table 4.1: GDP by Sectors in the period 1975-2009 (LD millions at current price)

Sector	1975	1980	1985	1990	1995	2000	2005	2009
Agriculture	82.9	236.4	342.2	482.9	933.4	1437.7	1554.5	2382.7
Oil & Natural Gas	1961.1	6525.7	3500.4	3243.8	3380	7761.9	39937.5	47087.1
Mining	20.7	48.7	49.6	105.5	132.9	293.9	495.5	144.1
Electricity, Gas & Water	17.6	48.7	111.7	152.2	216.7	270	379	1334.6
Manufacturing	65.5	210.4	421.7	457.6	743.1	889.7	799	5447.6
Construction	434.7	1102.3	677.4	457.8	477.9	1013.9	1718	7577.5
Transport	175.8	420.1	471.8	645.8	905.4	1213.9	1947.5	4125.8
Commerce	224.6	516.9	572.2	789.5	1267.1	1685.9	2797.9	4298.3
Finance	98.9	246.4	253.7	285.3	232.6	357.2	560.1	1181.8
Housing	131	210.4	250.5	302.6	398.8	475.5	614.1	6154.8
Services	461.5	987.8	1200.9	1321.9	1984.4	3057.3	5221.7	7260.3
Total GDP	3674.3	10553.8	7852.1	8244.9	10672.3	18456.9	56025.2	86289.0
Oil & Natural Gas	1961.1	6525.7	3500.4	3243.8	3380	7761.9	39937.5	47087.1
Non-Oil	1713.2	4028.1	4351.7	5001.1	7292.3	10695	16087.7	39201.9

Sources: Central Bank of Libya, Economic Bulletin (2005; 2011). General Planning Council, department of Plans and Programs, Economic and Social Indicators (1962 – 2000).

Table 4.2: Sectoral Share of GDP (%)

Sector	1975	1980	1985	1990	1995	2000	2005	2009
Agriculture	2.3	2.2	4.3	5.9	8.7	7.8	2.8	2.8
Oil & Natural Gas	53.4	61.8	44.6	39.3	31.7	42.1	71.3	54.6
Mining	0.6	0.5	0.6	1.3	1.2	1.6	0.9	0.2
Electricity, Gas & Water	0.5	0.5	1.4	1.8	2	1.5	0.6	1.5
Manufacturing	1.8	2	5.4	5.5	7	4.8	1.4	6.3
Construction	11.8	10.4	8.6	5.5	4.5	5.5	3.1	8.8
Transport	4.8	4	6	7.8	8.5	6.6	3.5	4.8
Commerce	6.1	4.9	7.3	9.6	11.9	9.1	5	4.9
Finance	2.7	2.3	3.2	3.5	2.2	1.9	1	1.4
Housing	3.6	2	3.2	3.7	3.7	2.6	1.1	7.1
Services	12.6	9.4	15.3	16	18.6	16.6	9.3	8.4

Sources: Computed from Table 4.1.

4.2.1 The Dominance of the Public Sector in Economic Activity

The seventies and early eighties witnessed a significant increase in the role of the public sector in economic life; this was due to the requirements and development goals aimed at the establishment of the infrastructure of the economy and delivery of public services, in addition to focusing on the establishment of large projects in some of the main productive sectors such as agriculture and industry. The available data on the contribution of both the public and the private sector to total investments implemented during the period 1970-1997, as shown in Table 4.3, show that the state took control of economic life to a large extent, as the public sector accounted for 84% of total investments allocated to economic sectors during the period 1970-1997. From the Table 4.3, it seems clear that the period 1981-1985 saw the highest accumulation of the public sector to the total investment, where the rate stood at 91.7% of total investment allocated to economic sectors, before the private sector began to increase its contribution to economic activity.

Table 4.3: Public and Private Sector Investment (1970- 1997)

Period	Public sector		Private sector		Total (LD millions)
	Value	%	Value	%	
1970 - 1972	546.6	69.1	244	30.9	790.6
1973 - 1975	1742.6	79	460.4	20.9	2203
1976 - 1980	7282.8	88	1057.2	12.8	8340
1981 - 1985	980.5	91.7	88.7	8.3	1069.2
1986 – 1990	4051.2	90.2	440.1	9.8	4469.2
1991 - 1997	3295.7	75	1075.3	24.6	4491.3
1970 - 1997	17899.4	84.2	3365.7	15.8	21265.1

Source: Ganous (1999: 57).

The dominance of the public sector in economic activity can also be measured by other indicators such as the proportion of public expenditure to GDP, as shown in the Table 4.4.

The table 4.4 shows that the role of public sector in the economy was rather high during the period 1972-1988, which peaked with 61.3% in 1978, mainly due to the increased oil revenues after the first oil shock. However, it seems clear that, since 1986, the role of the public sector has experienced a gradual decrease, which can be explained among other factor with the movement towards greater economic freedom,

opening the way for the private sector to contribute to economic activity (Shamia, 2007; Makori, 2007).

Table 4.4: Measuring the Size of the Public Sector in the Libyan Economy (LD millions)

Year	GDP (Current Prices)	Public Expenditures (PE)	PE/GDP (%)
1970	1288	362.5	28.1
1972	1735	695.8	40
1974	3796	1846.6	49
1976	4768	2696.7	57
1978	5496	3370.3	61.3
1980	10553.8	4545.5	43
1982	8781	5173	59
1984	7681	4610	60
1986	6577	3636.5	55.3
1988	6547	2970	45.4
1990	8244.9	2594	31.5
1992	9135	2721	30
1994	9913.5	2593.1	26.2
1996	11782.5	2725.4	23.1
1998	12610.6	4441	35
2000	18456.9	5250.2	28.4
2002	25914.1	8487	32.8
2004	48105.4	17230	35.8
2006	80729.9	21378	26.5
2008	116639.6	44115.5	37.8
2009	86289	35677.2	41.3

Source: Central Bank of Libya, Economic Bulletin, (various issues); Ganous (1999)

The dominance of the public sector in economic life was the result of the establishment of large development projects such as infrastructure and heavy industry projects, as well as the inability of the private sector to finance and operate such projects at that time due to not having private accumulation (Sharif, 2007; Abdussalam, 2006). However, other reasons played a major role in expanding the role of the public sector in the Libyan economy, such as the transition to socialism from the mid-1970s, which produced a series of laws and resolutions that contributed significantly to the dominance of the state and the public sector in the economy. In supporting this, Abdussalam (2006) suggests that the most important of these laws and resolutions can be listed as follows:

- (i) Law No 31 of 1970, concerning insurance companies and aiming at keeping these companies under state control;

- (ii) Law No 86 of 1975, organising the automobile trade, distribution and spare parts, restricted to six companies (later merged into just two companies);
- (iii) The resolution of the General People's Congress in its first ordinary meeting (1976), for the nationalisation of foreign trade;
- (iv) Resolution of the General People's Congress in its second Ordinary Session in 1976 to establish consumer cooperatives;
- (v) Law No 4 of 1978 specifying certain provisions for real estate ownership and its amendments;
- (vi) The resolution of the GPC on 06.05.1979, which limited the import of consumer goods to public companies;
- (vii) Decision of the GPC dated 28.3.1981 for achieving full control of the distribution of clothes, textiles, shoes, household equipment, spare parts and building materials;
- (viii) The resolution of the Basic People's Conferences in its normal third session for the year 1982, drafted by the General People's Conference in the second normal session 1983, which concerned the organisation of trade and banned individuals from engaging in any business. This law also confined the organisation of trade to markets controlled by the public sector.

Therefore, it seems clear that the public sector dominated the Libyan economy for a long time and for several reasons, including adopting socialism, implementing a set of development plans, and issuing a series of laws and decisions that gave absolute power to the state to control all economic activities in that period were the main reasons for the expansion of the public sector. These reasons can be located in the ideological shift and the financial and legal positioning of the country.

4.2.2 Imbalance in the Structure of Exports

By tracking the composition of the structure of Libyan exports, it seems clear that oil exports are dominant. The data in Table 4.5 illustrate the Libyan exports classified by commodity during the period 1970-2008, indicating that the proportion of exports of

mineral fuels has never been less than 92% of the total exports during that period, despite all the policies and efforts made through development programmes for more than three decades to diversify exports. Therefore, these problems mean that the Libyan economy is heavily influenced by what is happening in global markets, especially oil markets. Fluctuations in Libyan exports after a drop in oil prices in the early eighties are clear evidence of this: exports fell by about 44% during the period 1980-1985, and exports of mineral fuels also decreased during the same period by 44%. This impacted negatively on the implementation of several development programmes during this period, as mentioned earlier.

4.2.3 Lack of National Labour and its Concentration in Certain Sectors

Preparation of development plans during the past decades was accompanied by an increase in the demand for labour in various areas. Abu Snina (1997) indicates that the period of implementation of development plans was characterised by the availability of financial resources. However, lack of employment meant that the Libyan economy was unable to exploit its full financing capacity in the implementation of ambitious development projects, prompting the state to resort to foreign workers. In this context, Abdussalam (2006) suggests that this situation was different from any other experience in developing countries, where the real challenge to development efforts is usually a lack of capital, not a shortage of skilled labour.

Table 4.6 shows that total employment had reached about 677,100 workers in 1975, and then rose during the period 1975-1980 by about 20 % to 812,000 workers; it then rose to 1,018,000 workers in 1990 at a rate of increase of about 25%, increasing to about 1,734,000 workers in 2001. The rate of increase was equivalent to about 70% during the period from 1990 to 2001.

Table 4.5: Libyan Exports according to Commodity Classification, 1970-2008 (LD millions)

Classification	1970	1975	1980	1985	1990	1995	2000	2005	2008
Food & livestock	0.027	0.03	0.0	0.0	13.3	12.2	6.07	2.3	1.28
Beverages & tobaccos	0.017	0.0	0.0	0.0	0.6	0.01	0.0	0.0	0.0
Crude materials inedible – except fuel	0.6	0.1	0.0	0.0	20.5	10.1	1.59	3.5	11.83
Mineral fuels	841.1	2023.1	6486.3	3592.2	3534.7	2966	4992.2	30312.2	52946.9
Animal and vegetable oil and fats	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.13
Chemical materials	0.0	1.1	0.8	53.4	141.6	134.8	190.7	825.2	1352.9
Goods classified according to materials	0.03	0.4	1.5	0.0	30.3	84.5	30.6	2.3	418.96
Plants and equipments	0.0	0.1	0.1	0.0	1.1	4.6	0.0	2.5	0.63
Miscellaneous products	0.0	0.0	0.4	0.0	2.7	10	0.38	0.0	0.38
Goods classified on the basis of kind	0.0	0.0	0.0	0.0	0.01	0.0	0.0	0.0	0.0
Total	841.8	2024.8	6489.1	3645.6	3744.9	3222.2	5221.6	31148	54732.37
% of Mineral fuels in Total Exports	99.9	99.9	99.9	98.5	94.3	92	95.6	97.3	96.7

Source: Libyan National Corporation for Information and Documentation, External Trade Statistics, 1954-2003; Central Bank of Libya, economic bulletin, (various issues); Ganous 1999.

Therefore, it seems clear that there was a growing demand for employment as a result of the plans and programmes for development that were implemented during the past decades, accompanied by massive investments disbursed in many sectors.

Table 4.6: The Evolution of the Use of Manpower in Libya 1975 – 2001

(LD Thousands)

Statement	1975	1980	1990	2001
National employment	454.1	532.8	879.4	505.9
Foreign employment	223	280	139.1	928.7
Total employment	677.1	812.8	1018.6	1734.6
Population	2430	2970	4229	5842
National employment to population (%)	18.7	18	20.8	14

Source: Ganous (1999), Makori (2007).

The Table 4.6 also depicts that the total amount of foreign labour reached about 223,000 workers in 1975, rising by 25% during the period 1975-1980 to about 280,000 workers. However, the data show that total foreign employment had dropped to just 139,000 workers in 1990, a rate of decline of more than 50% during the period from 1980 to 1990. In this context Makori (2007) suggests that the low proportion of foreign workers in the eighties may be due to certain actions that were taken during the crisis in that period as a result of the collapse of oil prices in global markets, leading to a sharp decline in the financial resources of the state. These measures include the imposition of restrictions on remittances of foreign workers, in addition to a reduction in the development budget. Then, foreign employment in the Libyan economy increased during the period 1990-2000 by more than 500%. This increase was due to the opening of the Libyan market to many Arab and African countries in that period; available data indicate that the proportion of Arab and African employment of the total foreign employment reached more than 82% in 2001 (Libyan National Corporation for Information and Documentation, 2002).

Moreover, the Table 4.6 shows that the proportion of national employment to total population during the period 1975-2001 did not exceed 20.8%. In this context Makori (2007) believes that this may be due to two main factors. The first is the ratio of women's participation in economic activity; this was low, reaching about 6.7% of the total workforce in 1975, and not exceeding 20% of the total in 2001. Secondly, it may be due to the age structure of the population: the percentage of the categories of the

elderly and children in 1975 was 48%, falling in 2001 to just over 35%. One should also take into account the presence of unemployment, as the number of job seekers in 2001 was 85,266 people (Libyan National Corporation for Information and Documentation, 2002).

Thus, it seems clear that the Libyan economy depends heavily on foreign labour in spite of the great allocations that have been spent on training and education, which amounted to about 3% of the total investment for the period 1970-1997 (Makori, 2007).

Regarding the distribution of the workforce in economic activities, it can be observed from the data in the Table 4.7 that Libyan employment is concentrated in particular in the services sector; the proportion of workers in this sector in 1970 was approximately 53.2% of the total national labour force, rising to 58.4% in 1975 and reaching 76% of the total national labour force in 2004. Meanwhile, the national workforce in the agriculture sector decreased continuously during the period; it represented more than 30% of the total national employment in 1970, declined to about 25% in 1975, then continued to decline until it reached only about 4.6% in 2004. This means that the decline was to the benefit of the services sector at the expense of agricultural activity. Moreover, according to available data in Table 4.7, national employment in the industry sector increased from 3.9 % in 1970 to around 9.1 % in 2004.

Table 4.7: The Distribution of the National Workforce by Economic Activities (1970 –2004) (%)

Sector	1970	1975	1980	1985	1990	1995	2004
Agriculture	30.8	25.4	23.2	21.9	20.3	8.1	4.6
Industry	3.9	4.2	6.6	7.3	9.9	8.2	9.1
Oil and mining	2.3	2.7	2.5	2.4	2.7	2.1	2
Construction	7.8	7.2	8.9	9	8.4	8.2	6.1
Electricity, gas and water	2	2.1	2.9	3	3	2.9	2.4
Services (social & productive services)	53.2	58.4	55.9	56.4	55.7	70.5	76

Source: Arab Monetary Fund (2006); Ganous (1999).

With regard to foreign employment distribution by economic activities, the available data indicate that it is concentrated largely in the construction sector, as it absorbed about 38.4% of foreign workers in 1970; this figure had risen to 53.7% by 1975, then

continued to rise to about 67% in 1990 (Libyan National Corporation for Information and Documentation, 2002).

It seems clear, therefore, that the national employment has concentrated in service sector productivity, in services such as hotels, restaurants, trade and finance, insurance, or social services, which include public services, health, education and others. This explains the continued reliance on foreign workers in other sectors, especially the construction sector.

4.2.4 Inefficiency of Public Sector Enterprises

As mentioned, and shown earlier in Table 4.3, the private sector was playing an important role in economic activity in the early seventies, when its contribution to investment exceeded 30% of the total investment in that period. However, this role began to disappear later, and the public sector dominated all economic activities, as its contribution amounted to about 92% of the total investments in the eighties. A range of factors have contributed to the dominance of the public sector, such as requirements for implementation of development plans and major projects carried out in that period, in addition to the socialist policies adopted by the Libyan government at the end of the seventies and the issuance of laws and resolutions that contributed to expanding the public sector in the Libyan economy.

The main objective of increasing the role of the public sector was to contribute effectively to the development process; however, it seems that there was a gap between what was actually achieved by the public sector and the desired goals. Although no one can deny the role of the public sector in the previous period, it did not reach the desired level of expectations. Many authors such as Tapoli (2004) and Shernanna and Elfergani (2007) point out that the public sector played a key role in establishing the infrastructure of the Libyan economy such as roads, power plants, water networks, communication, ports and airports, and other mega projects. They stress that the private sector was completely incapable of setting up such projects, especially in that period, as a result of the weakness and lack of financial capacity of the private sector, and the magnitude of these projects and their financial needs. Moreover, the public sector has contributed to building a national industrial base represented in factories, and production and service facilities; this played a key role in

creating huge job opportunities for national labour, and improving the income level of individuals in the community. The dominance of the public sector in the Libyan economy, however, has resulted in a number of negative consequences such as relying on the public budget as a major financier of all activities and economic projects, which already relies on oil revenues. Moreover, the public sector is the main employer of the labour force in the community, causing a number of financial burdens, which have grown with the increase in population and the increase in the number of workers, accompanied by a decrease in productivity and return on investment. Furthermore, achievements by the public sector were not commensurate with the value of the massive investments; it was hoped that the revenue projects of this sector would be the financier for the state budget, but in fact this sector continued to drain the general budget of the state (Tapoli, 2004; Faresi and Shehoumi, 2006).

In this context, Futaisi (2005) also suggests that public sector enterprises, which controlled all economic activities in Libya for a period of about three decades, have been suffering from many problems which can be summarised as follows:

- (i) These enterprises were depending primarily on public resources to finance investments, causing inflation in asset size and inefficiency in investment;
- (ii) Weakness in marketing capabilities of most public companies has led to the accumulation of commodity stocks and lack of liquidity;
- (iii) Problems related to the management approach of the public sector, where the poor management and low level of training and development of employment and the surplus of labour in many companies have led to many negative consequences such as increasing costs, low profits, weak competitiveness, inability to renew assets, and weak capacity and productivity.

Moreover, the problems of SOEs led to the emergence of many problems in the related sectors; the expansion in granting credit to finance the activity of these enterprises in light of their inability to make a profit, as well as the accumulated losses

in these companies, led to an increase in financial obligations, hence impacting negatively on the banks' and financial institutions' capabilities.

Available data, as well as several studies, have confirmed that the performance of SOEs was well below the desired level. For example, a study by the General People's Committee of Planning and Finance (Ministry of Planning and Finance) to measure the efficiency and productivity of state-owned enterprises concluded that the percentage of loss-making public companies in the food industry amounted to 89% in 1987, and the proportion of loss-making institutions in the field of engineering and metal industries was 50%. Meanwhile the proportion of loss-making enterprises in the industry of construction materials reached 100% (General People's Committee of Planning and Finance, 1999). This means that a large number of public sector institutions suffered losses, making them a burden on the state budget. Moreover, most of the state-owned enterprises have been suffering from low productivity, as the actual production capacities are much lower than the designed capacities, which result in a waste of economic resources. In a study by the General Authority of Industry (2001) to measure the rate of achieved production to the target production, and to the available capacity of the state-owned enterprises, results confirmed, as in the Table 4.8, that most public enterprises suffer from poor productivity. Despite the cement industry achieving a reasonable proportion of actual production, amounting to 69% of the target and 59% of available capacity, the actual production rate of most other industrial fields ranged from 15% to 45% of the target production; even worse, the proportion of actual production did not exceed 31% of available capacities in these sectors. Data also demonstrate that in some areas such as engineering and electrical industries the ratio of the actual production was extremely low, with no more than 6% of available capacity in 2001. Moreover, it seems clear from the table 4.8 that there was a decrease in actual production in 2001 compared to 2000; the decline was very significant in some areas such as engineering and electrical industries, which reached about 70%, and the textile sector with a rate of decline of 40%.

Table 4.8: The Total Value of Available Capacities, Target and Actual Production of Industrial SOEs in (2001)

Type of industry	Available capacity	Value of production		Actual production (2000)	Actual (%)		Change (%) 2000-2001
		Target	Actual		Target	Available	
Textile	66269	44472	20160	33970	45	30	(41)
Chemical	348162	217635	81435	106669	37	23	(24)
Metal	99739	55578	27917	34556	50	28	(19)
Cement	152930	131885	90676	92270	69	59	(2)
Engineering and electrical	704120	266798	40214	134109	15	6	(70)
Food	400618	367991	124468	148852	34	31	(16)
Total	1771865	1084359	384888	550426	35	22	(30)

Source: General Authority of Industry, Report of Production and Marketing Affairs Department, (2001: 7).

Moreover, in his study to assess industrial state-owned enterprises, Al-Gaddafi (2002) concluded that the industrial sector, which absorbed more than LD 4 billion from the allocations of development plans and employed about 47,000 workers, suffered from many problems. He indicates that production capacity of approximately 70% of the public factories did not exceed 60% of the maximum designed capacity. For example, the agricultural sector, which was often a target to achieve strategic goals such as food security and self-sufficiency, did not achieve the desired results, as the self-sufficiency ratio did not exceed 21% due to the low production in most agricultural projects. He also illustrates that 98 out of a total of 175 agricultural projects stopped working, equivalent to about 56% of the total number of projects.

Furthermore, Tarhuni (2003), in his study to assess the investment experience in the manufacturing sector during the period 1986-2001, concluded that the highest percentage of actual production in the industrial sector, on average, occurred in 1993 and did not exceed 52% of the total available capacities, while the lowest percentage was in the year 2001, amounting to 24%, as shown in the Table 4.9.

Table 4.9: Actual Production and Available Production Capacity for the Manufacturing Sector 1986 – 2001 (LD millions)

Year	Actual production	Available capacity	(%) actual to available
1986	4577	1476.4	31
1987	532.7	1401.8	38
1988	655.4	1423.9	46
1989	684.8	1724.5	40
1990	774.2	1935.5	40
1991	830.4	2076	40.7
1992	968	2104.3	46
1993	1180.3	2269.8	52
1994	952.1	2223.7	43
1995	837.4	2306.9	36
1996	822.4	1900.9	43
1997	839.8	2025.7	41
1998	205	936.2	42
1999	953.8	2110.2	45
2000	732.1	2265.7	32
2001	556.6	2348.6	24

Source: Tarhuni (2003:14).

It seems, therefore, clear from the presented data and from conclusions drawn from studies on the assessment of public enterprises that the public sector had significant problems such as inefficiency, low productivity, and an inability to achieve profitability, hence its inability to compete or survive without support and subsidy from the government, causing a burden on the public budget, especially as the public sector is so huge and represents a large proportion of the total investments in the Libyan economy. Thus, it could be said that state-owned enterprises have not achieved satisfactory results and have failed the economic and social development process, causing the waste of economic resources.

4.3 REASONS FOR THE FAILURE OF PUBLIC SECTOR ENTERPRISES IN LIBYA

Many authors such as Tapoli, (2004), Fatory (2004), Alruyati (2004) and Futaisi (2005) believe that the disappointing performance of SOEs can be attributed to a variety of overlapping reasons, which can be listed as follows:

(i) The absence of managerial competencies

Management in public sector companies was characterised by state intervention in their work, especially in the appointment of senior management, leading to instability of senior management and constant change in styles and patterns of management,

which reflect negatively on the productivity and performance of these companies. This may have been due to the absence of clear standards in selecting the administrative leaders of these companies, which led to the presence of ineffective leadership in these public companies. Moreover, administration in most, or all, of these companies suffers from bureaucracy, red tape and the multiplicity of working committees, which impacted negatively on the performance. Furthermore, public companies have been working in a monopoly market for long time, with protection by the government through the issuance of laws that prohibit the import of similar goods from abroad, thus leading to the exposure of these companies to marketing risks after the market had opened up. In addition, given that the state is responsible for supplying all the needs of these companies such as money, raw materials and operating requirements, the managers of those companies and factories have become unconcerned about the preparation of necessary economic studies.

(ii) Pricing and quality of goods

A result of the socialist orientation in Libya, the main goals of the public sector were centred on the prohibition of exploitation by the private sector and the provision of products and commodities to achieve self-sufficiency in Libyan society. Consequently, public sector companies have been operating in a monopolistic environment, adversely affecting the cost and quality of production. Moreover, the government is responsible for setting the pricing policy for all commodities and services provided by state-owned enterprises. Pricing policy was based on subsidies, as well as to encourage domestic production or reduce prices for those products with high costs, taking into account the social dimension, especially for low-income citizens. It should be noted that in accordance with this policy, prices of most products of state-owned enterprises have been fixed for many years, possibly more than twenty. Thus, the pricing policy did not take into account the production, marketing, and financial conditions of these companies that have been much affected by the lack of profits and accumulation of losses. Regarding the quality of goods and services provided, many factors, such as monopoly situations, production for the domestic market only, the lack of modern technological development, and non-application of any conditions or worldwide standards for quality, have resulted in state-owned enterprises not paying much attention to the quality of goods and services.

(iii) Employment policy

Job creation for the national labour force and a reduction in the unemployment rate have been among the main goals behind the establishment of state-owned enterprises and their increased role in the economy. The adoption of these objectives led the government to implement appointment and employment policies without any rules and standards in the selection and appointment process, as well as failing to take into account the actual need of these companies for employees. Consequently, the recruitment process has become subject to personal relationships, mediation, and the intervention of a state that considers these companies as havens for job-seekers. Hence, this has impacted negatively on the efficiency and productivity of public sector enterprises, since the surplus labour undoubtedly creates disguised unemployment that raises the cost of production and reduces the chances of competition.

(iv) Investment policies

State-owned enterprises do not have the autonomy to make investment decisions, as their budgets and investment policies are subject to the owner (state), not to the management, of these companies. As a result, the capacity of public companies has been very limited, and most of them have become unable to perform many essential functions such as expanding and developing the business of the company, implementing necessary training programmes, and updating the technology used.

(v) Lack of monitoring system

Although there were a number of laws and regulations governing the work and activities of SOEs in regard to employment, procurement and bidding, sales and marketing, and financial and administrative business, there are still weaknesses in the systems of control and monitoring, and failing systems of reward and punishment for employees in these companies, which provides the opportunity to carry out embezzlement and fraud, leading to weakness in the efficiency and performance of these companies. Moreover, it should be noted that there are other problems related to authorities and regulatory bodies, as they may not be able to detect errors and faults or observe manipulation in a timely manner, because these bodies often suffer from

numerous difficulties such as insufficiency of competent elements or inefficiency of supervisory methods.

The discussion, hence, so far makes clear that Libya has adopted the policies of the command economy, and the public sector has dominated all economic activities on the grounds that the state is able to carry out large development projects such as infrastructure projects and establish productive enterprises to achieve many goals such as self-sufficiency, diversifying the sources of national income and reducing the dependence on oil exports, as well as achieving many social goals such as creating job opportunities for the national labour force, and achieving balanced regional development. Although the public sector played an important role in building the infrastructure of the Libyan economy, it has failed to achieve other desired objectives. Many studies and available data, as illustrated earlier, have proved that state-owned enterprises suffer from financial, administrative and productivity problems; most public institutions are characterised by inefficiency in performance and productivity, and inability to achieve profits, making them a great burden on the state budget. As mentioned above, there are several reasons for the disappointing results of public sector institutions, such as state intervention in the management and policies of these companies, weakness of management, and inefficiency of regulatory methods and bodies in the country. It was therefore necessary to respond to the economic reform and address the problems of the public sector. One of the most important methods of improving the efficiency of SOEs is to privatise them and transfer them to the private sector, which is led by market mechanisms and is able to manage economic companies in a better manner. Thus, the Libyan government has been adopting a series of reform policies, and has begun to privatise state-owned enterprises to address the shortcomings in the public sector.

4.4 PRIVATISATION IN LIBYA

Privatisation policy, as implemented mainly in 1980s and 1990s in most countries, is applied on a large scale to address the problems of the public sector and the negative consequences of state control of economic activities. Among others Kikeri and Nellis (2002) and Parker and Kirkpatrick (2005) suggest that currently it is not easy to find a state that has not become involved in a programme to divest itself of some or all of its

SOEs or to engage the private sector in the management, ownership and operation of these enterprises. Libya is no exception, as the government has adopted a policy of privatisation of SOEs. This section, hence, discusses a range of issues related to the programme such as the objectives of privatisation, legal and administrative framework, and issues relating to the executive aspect of privatisation in Libya.

4.4.1 Rationale for Privatisation in Libya

As mentioned above, the state's control over all economic activities resulted in a number of negative consequences, whether at the macro level with regard to the dominance of the oil sector in economic activity and the structure of Libyan exports, or at the micro level with regard to weakness in the performance and inefficiency of SOEs. In this regard, Privatisation Agency, which is responsible for implementing the program in Libya, indicates in its report of 2010 that the adoption of the privatisation programme came as a result of the shortcomings of public sector companies, which can be summarised as follows:

- (i) Most state companies and public economic units have failed to satisfy citizens' needs for goods and services, in terms of quantity and appropriate quality, despite the availability of protection for these companies for more than three decades. As a result, consumers have been suffering from a lack of essential needs;
- (ii) An increase in the volume of investment accompanied by a decline in operating levels in most state enterprises with a surplus of labour, especially unskilled labour;
- (iii) Poor performance resulting from the adoption of non-economic or non-commercial policies in these enterprises;
- (iv) The exercising of public enterprise monopolies in the market, and their inability to compete;
- (v) Most state companies have been suffering from many problems concerning the provision of financial liquidity and the budget necessary for the conduct of their activities; this has led to the emergence of significant financial obligations that

have caused problems for banks as a result of them granting credits that were not based on proper terms.

- (vi) Frequent interruptions and discontinuity in the work process due to several financial, administrative and technical reasons have led to increased losses by public sector companies.

4.4.2 Objectives of the Privatisation Programme

The Libyan privatisation programme aims to achieve a number of objectives, which can be summarised as follows (Privatisation Agency, 2010):

- (i) To improve the efficiency and competitiveness of productive and service projects;
- (ii) To remove the imbalances and distortions that accompanied the control of the public sector of the Libyan economy;
- (iii) To support the public treasury by stopping the subsidies paid to loss-making companies, and obtaining financial returns from the privatisation process;
- (iv) To encourage and develop the private sector by stimulating domestic savings for investment in economic activity, attracting foreign investors, and facilitating access to technology and modern management methods.

4.4.3 The Evolution of the Legislative and Legal Framework of the Programme

In 1986, Law No. 1 was issued regarding ownership of the Libyans as their share in companies. This law can be considered to be the first law passed with regard to the issue of transferring the ownership of SOEs. The actual beginning of the implementation of the programme to transfer ownership was in 1987, when the General People's Committee (Prime Ministry) issued a set of related resolutions, which can be listed as follows:

- (i) Resolutions No 219 and 225 in 1987, and resolutions No 183 and 214 in 1988, regarding transferring some factories to the employees who worked in them;
- (ii) Resolution No 427 in 1989, regarding setting the basis of the application of collective ownership of economic units;

- (iii) Resolution No 717 in 1991, regarding transferring some factories to the employees who worked in them.

Then, in 1992, the legislative authorities issued Law No 9 regarding the organisation of economic activities. This law, in some of its provisions, referred to the issue of ownership transferring, and gave powers to the General People's Committee to carry out the programme through the issuance of regulations and the development of essential policies, plans and mechanisms for implementation.

The General People's Committee issued several resolutions, which can be listed as follows:

- (i) Resolution No 300 of 1993 includes rules to organise the transfer of ownership of public economic units;
- (ii) Resolution No 198 of 2001 established the Privatisation Agency, which is responsible for implementing the privatisation programme;
- (iii) Resolution No 31 of 2003, regarding the issuance of the regulation for the process of privatisation of public companies;
- (iv) Resolution No 92 of 2003, to mandate a high committee to manage the privatisation programme;
- (v) The issuance of a series of resolutions regarding operational issues, such as the adoption of evaluation results for some companies and economic units, and authorising the privatisation agency to complete the process of privatisation of some companies that have been evaluated, as well as other related resolutions;
- (vi) Resolution No 52 of 2005, regarding the issuance of new regulations for the programme of privatisation of public companies;
- (vii) Resolution No 118 of 2007, to develop the regulations issued in 2005;
- (viii) Resolution No 89 of 2009, to merge the Investment Authority and Privatisation Agency, to be called the Privatisation and Investment Board (PIB).

4.4.4 The Evolution of the Regulatory and Administrative Framework of the Programme

There is no doubt that the privatisation of SOEs programme needs regulatory and administrative frameworks for preparing and developing plans, and staff need to implement this programme in a proper manner. In this regard, it can be said that the development of an administrative and regulatory framework for the privatisation of public sector enterprises in Libya has gone through various stages, which can be summarised as follows:

In 1986, under Law No 1, the first regulatory and administrative body was established, and was called the National Investment Company. The main objective of this company was to enable Libyans to take up shares from public companies through the collection of contributions by deducting 1.5% of the salaries of employees who work for the government departments and public enterprises, and taking the same percentage of the net annual income, of at least LD 60, from citizens who work in the private sector. In this regard, it should be noted that, despite the application of the law and the establishment of the above-mentioned company, as well as the collection of contributions, no real action was taken, and there was no transfer of ownership of any public enterprises or economic units owned by the state, either wholly or partially.

In 1989, the General People's Committee issued the Resolution No 427 regarding the application of collective ownership of public economic units. Under this decision the various People's Committees (ministries) and People's Committees of the Municipalities (in all cities) were mandated to take all the measures and policies necessary to implement the transfer of ownership or privatisation of public companies. Accordingly, these Committees issued decisions and took the necessary measures to set up committees to evaluate and transfer the ownership of some factories and SOEs. It should be noted that there were some deficiencies in the decisions and actions taken by these committees, such as failing to identify a specific time period for payment for the privatisation, and linking the payment for privatisation to the achieving of financial returns and profits. Consequently, these problems hindered the privatisation programme in that period (Shernanna and Elfergani, 2006).

In 1992, the legislative authorities issued Law No 9, which defined the executive authority through the formation of a central committee to oversee the process of privatisation of public corporations and address the previous shortcomings. This committee included the Secretary of the General People's Committee (Prime Ministry) and a number of experts and specialists; this committee was empowered to seek assistance from others who had appropriate experience and competence.

In 2001 the General People's Committee issued a Resolution 198 to establish Privatisation Agency, which is independent administratively and financially. This body is responsible for the entire programme, beginning with the selection of candidate companies and the asset evaluation process to privatise state-owned enterprises. According to this Resolution, the functions of the Privatisation Agency are as follows:

- (i) Proposing companies and public institutions for privatisation and setting up a timetable for the programme, as well as developing technical, financial and administrative rules to be followed in the selection, evaluation and privatisation;
- (ii) Proposing policies for the restructuring of public enterprises that are candidates for privatisation, to ensure the success of the programme and speed up the procedures;
- (iii) Determining the financial position of public companies, and taking the measures necessary for privatisation;
- (iv) Proposing the facilities and the necessary protection for newly-privatised companies such as reducing taxes, facilitating customs procedures, and providing access to foreign currency, in accordance with existing legislation;
- (v) Holding seminars, conferences and intensive meetings to explain and clarify the goals, mechanisms and all issues related to privatisation;
- (vi) Supervising and overseeing public companies after privatisation, to overcome any difficulties that may be faced;

- (vii) Following the procedures of previous privatisation, collecting payments, and issuing certificates of ownership transfer;
- (viii) Cooperating and coordinating with the competent bodies and research centres in the provision of scientific support and technical, financial, legal and administrative expertise for public companies, to ensure the continuation of their activities in an economical manner.

To carry out these tasks, the Privatisation Agency coordinates with committees to oversee the programme in the various cities. These committees consist of technical and financial specialists, in addition to delegates from the General Workers' Union. In addition, the privatisation agency coordinates with the relevant authorities such as the General Planning Council, General Workers Union and the Central Bank of Libya to develop a master plan for the privatisation programme.

In 2003, the General People's Committee issued a Resolution 92 to form a high committee to manage and supervise the privatisation programme. This committee consists of the following personnel:

- (i) Secretary of the General People's Committee (Prime Minister) as head of this committee;
- (ii) Assistant Secretary of the General People's Committee (Deputy Prime Minister) as vice-head of the committee;
- (iii) Secretary of the General People's Committee (Minister) of Manpower, Training and Employment, as a member of this committee;
- (iv) Secretary of the General People's Committee (Minister) of Finance, as a member of this committee;
- (v) Secretary of the General People's Committee (Minister) of Planning, as a member of this committee;
- (vi) Secretary of the General People's Committee (Minister) of Economy and Trade, as a member of this committee;

(vii) Head of Privatisation Agency.

This committee performs a set of tasks, which can be summarised as follows:

- (i) Developing the general policies for the privatisation of SOEs;
- (ii) Determining the enterprises and giving permission for privatisation according to the stages of the privatisation process, and issuing the necessary decisions in this regard.
- (iii) Approval of results of the evaluation of the company's assets, and issuing decisions with regard to appropriate facilities and exemptions;
- (iv) Reviewing policies and procedures of the Privatisation Agency, and providing appropriate guidance, as required by the circumstances and stages of privatisation;
- (v) Proposing solutions and remedies to the problems and difficulties faced by the agency during the implementation of privatisation;
- (vi) Coordination between the relevant authorities for the success of the privatisation programme;
- (vii) Approval of some technical issues such as the proportion of shares granted to workers, and priority in the subscription;
- (viii) Proposal to set up institutions to help the success of the privatisation programme and create a favourable environment for investment, working to provide the appropriate level of transparency, secure property rights, and facilitating the procedures of selling and trading of the shares;
- (ix) Adoption of the proposals on foreign participation;
- (x) Issuing decisions on exemptions, facilities, and the necessary protection in accordance with existing legislation;
- (xi) Making all arrangements to ensure the implementation of the privatisation programme, and the achieving of its objectives.

In 2004, the General People's Committee issued a Resolution No 93 to form committees supervising the privatisation programme in the main cities, consisting of technical and financial specialists, in addition to delegates from the General Workers Union. These committees perform several tasks, which can be summarised as follows:

- (i) Carrying out the function of restructuring the financial and administrative systems for public companies offered for privatisation;
- (ii) Coordinating with the management of SOEs to provide necessary data for the assets evaluation;
- (iii) Following up the evaluation function with responsible offices and agencies;
- (iv) Reviewing reports and results of the evaluation task, and providing recommendations in this regard;
- (v) Coordinating with the competent authorities for the registration and publicity of the privatised companies;
- (vi) Supervising the task of inventory, delivery, and receipt of assets and property of public companies;
- (vii) Following-up to the completion of financial positions preparation with management of public enterprises, and then transferring them to the agency of privatisation;
- (viii) Supervision of the conservation and delivery of assets not covered by the privatisation, and the settlement of previous commitments;
- (ix) Provision of advice and opinion on related subjects.

In 2009 the General People's Committee issued a Resolution No 89 to merge the Investment Agency and Privatisation Agency into a single body called the Privatisation and Investment Board (PIB). This agency is responsible for all affairs of national and foreign investment in the local market, and for creating a favourable investment climate. In addition, it is working to encourage and increase private sector participation in economic development through the transfer of ownership or

management of public institutions to the private sector, and encouraging the establishment of new private projects. Therefore, it should be mentioned that this body handles all the tasks entrusted to the previous privatisation agency, along with some other tasks related to investment projects and the creation of private investment, whether foreign or national or joint.

From the above, it can be said that, although the trend towards privatisation began in Libya at the end of the 1980s, the institutional structure for privatisation was only established in 2001. The establishment of an agency for privatisation is a positive step in the organisation of the privatisation process, and reduces the likelihood of the impact of corrupt bureaucrats or crony capitalists on the process of privatisation as this agency is responsible for the entire programme, beginning with the selection of candidate companies, the assets evaluation process, and the selection of the method to privatise SOEs. Furthermore, creation of a high committee comprising the prime minister and ministers of other relevant ministries, to manage and supervise the privatisation programme is seen as a helpful measure to ensure transparency in the implementation of the programme.

There are, however, some problems accompanying the administrative process; for example, the delay in the establishment of a specialised body for privatisation may have been one of the reasons for the failure of the privatisation in the late 1980s and 1990s as, in that period, the privatisation was characterised by an erratic and disorganised approach. Such a situation could be considered as having a significant negative impact on transparency in the implementation of the programme, as well as affecting the satisfaction of workers in the public sector companies in particular, and the public in general, leading to a strong wave of opposition to the privatisation policy. Moreover, even after the establishment of the privatisation agency in 2001, many state-owned companies have been privatised by other governmental bodies. In other words, 360 public companies were referred to the privatisation agency for transfer to the private sector; at the same time, however, many other companies and banks have been privatised by other government agencies such as the Central Bank of Libya, the Economic and Social Development Fund (ESDF), and some other ministries. This means that, even after the establishment of the privatisation agency, the privatisation process was not confined to one institution, which may lead to the

creation of several sale points, possibly increasing concerns about the stability and transparency of the programme.

In practice, several forms of corruption took place as a result of the selling and privatising of some public companies out of the privatisation agency. For example, as stated in the report of the Ministry of Inspection and Control in 2010, many of the privatisation transactions are riddled with irregularities and violations of the law. The report states that the Department of Housing and Public Utilities privatised the Urban Development Holding Company by a process tainted by several irregularities, as there was fraud in the valuation of the assets of this company for the benefit of the foreign investor (the new owner), causing a loss to the state treasury of about LD 179 million, equivalent to about \$ 144 million. Furthermore, the report shows that there was a transaction involving a construction company's assets were being sold for about LD180,000. Estimated revenues of this company were about LD 50,000 a month. It is worth mentioning that, during the privatisation process, a process of supply of spare parts for this company at a value of LD 150,000 was taking place but was not included in the price, which means that the real selling value of the company was only LD 30,000, less than its revenue in just one month.

Therefore, it seems clear that the government took a positive step by establishing a specialised body for privatisation; however some privatisation transactions and sales of public companies' assets still take place outside this body, which is an important source of concerns and indicating un-structured manner of implementing the privatisation policies. There are also sources indicating that these deals are also tainted by suspicions and legal abuses; hence, they could adversely affect the transparency of the implementation, which is one of the most important conditions for successful privatisation.

4.4.5 The Implementation of the Privatisation Programme

As mentioned above, the programme of privatisation of SOEs started in 1987 and has since passed through several stages, and has been subjected to many problems and obstacles, and even stopped for a while, before the recent establishment of a specialised body, which has developed mechanisms and policies to implement this programme. Therefore, in this regard, it is possible to distinguish between the stages

of the implementation of the programme by dividing them into periods before and after the establishment of the Privatisation Agency, which later became the Privatisation and Investment Board.

4.4.5.1 Privatisation before the establishment of the Privatisation Agency

This phase covers the period from 1987 to the establishment of Privatisation Agency in 2001. In this phase, a large number of public productive projects, in different sectors, were privatised, as shown in Table 4.10.

Table 4.10: Public Projects Privatised before the Creation of the Privatisation Agency

Activity	No of projects	The value(LD)	Instalments paid	% paid to value
Industry	145	51,556,426	22,556,668	43.7
livestock	45	16,809,229	5,353,806	31.8
Marine	219	32,816,329	6,009,020	18.3
Agricultural	4436	66,640,346	9,268,300	13.9
Total	4845	167,822,330	43,187,794	25.7

Source: Shernanna and Elfergani (2006: 7).

Some significant points can be summarised from the available data and in table 4.10:

- (i) Privatisation at this stage focused mainly on the productive sectors of the national economy;
- (ii) The number of production units or projects privatised during this period amounted to 4,845 units, and most of these them were in the agriculture sector; the number of privatised units in this sector was 4,435, about 91.5% of the total;
- (iii) All these projects were privatised by the same method, which is the privatisation of the workers and management;
- (iv) The total value of these production units was about LD 168 million Libyan dinars; however, instalments have been paid amounting to LD 43 million, representing only 25.74% of the total.

It is worth mentioning that the production units that were privatised at this stage have faced many financial and technical problems, leading most of them to stop production (Shernanna and Elfergani, 2006; Abdussalam, 2006). These problems have been clearly reflected in the proportion of instalments paid for those projects, which did not

exceed 26% of the approved value. In this regard, the General People's Committee issued Decision 427 in 1989, which stipulated that each shareholder must pay a fifth of the shares' value before obtaining an ownership certificate, and must then pay off the rest of the value through direct debit of revenues of the privatised project. The resolution also stressed that instalments, which are deducted from the production of the project, must be transferred to the public treasury at the end of each financial year. Article 27 of the General People's Committee Decision No. 300 of 1993 also stressed that the shareholders must pay a part of the value in advance, as well as assigning each sector to a committee formed to follow up the collection of instalments. However, with all these decisions and after about twenty years, the data available in 2006 indicate that the rate of reimbursement to the value of these public enterprises did not exceed 26% of the approved value.

4.4.5.2 Privatisation after the establishment of the Privatisation Agency

After 1994, one can say that the programme of transfer of ownership or privatisation of public enterprises has been slow or stopped altogether; the focus in this period was to form specialised committees to evaluate companies and public economic enterprises in a proper manner, and to develop rules and regulations necessary to implement the programme successfully. The situation continued until the establishment of the agency in charge of privatisation in 2001, followed by the development of a comprehensive programme to privatise public sector companies in 2003. The target of this programme or the comprehensive plan was privatisation of 360 state-owned enterprises in three overlapping phases. It should be mentioned that the government stated that the period for the implementation of this plan was from the beginning of 2004 to the end of 2008. Table 4.11 illustrates the stages of the implementation of this programme, and the number of public institutions targeted at each stage classified by economic activity.

Table 4.11: Implementation Stages of Privatisation and SOEs Targeted in Each Sector

Activity	First stage	Second stage	Third stage	Total
Industry	145	41	18	204
Agricultural	28	4	24	56
Livestock	71	0	11	82
Marine	16	1	1	18
Total	260	46	54	360

Source: Resolution of the General People's Committee No. 313, 2003.

At the beginning of 2004, Privatisation Agency started to perform its tasks to implement the scheme, such as evaluation of companies' assets, and coordination with the Secretariat of the General People's Committee (Ministry) of Manpower, Training and Employment to deal with surplus labour in companies involved in the programme, as well as the settlement of obligations after companies' restructuring, dealing with the stock and assets not included in the privatisation, collecting revenues from the process, and other tasks. Data provided in various reports of Privatisation Agency illustrate that these efforts resulted in the following:

- (i) 47 units of agricultural projects were transferred to the Secretariat (ministry) of Agriculture to take appropriate decisions about them, whether by making contracts for their management and operation, dividing the projects into farms to be allocated or privatised to citizens, or others;
- (ii) 44 industrial units were transferred to the Secretariat (ministry) of Industry, and permission was given for disposal either by selling, scrapping, or making contracts of management and operation;
- (iii) 64 units of livestock and marine enterprises were transferred to the Secretariat (ministry) of Livestock and Marine Resources so that an appropriate decision can be taken about them;
- (iv) 5 general companies have been liquidated, namely the Public Company of Leather Products, the Libyan Company for Fishing, the National Company of Fishing and Fish Marketing, the National Company for Canning Fish, and the Company of Electrical Industries;

Available data in the reports of the Privatisation Agency also indicate that 115 companies were privatised at the end of 2010. In addition, there are 20 state-owned enterprises in the evaluation stage.

It should be noted that most of the production projects were been referred to the ministries had already been offered for privatisation; however, they have not been privatised due to obsolescence and depreciation. As a result, it was decided to dispose of them in any way possible to take advantage of their assets, or to help them re-engage in economic activity (Shernanna and Elfergani, 2006).

Thus, by reviewing the available data, it seems clear that the agency did not end the privatisation process in the planned time, which was the end of 2008, as stated in the plan in 2003.

Table 4.12 displays the privatisation of SOEs each year, and the value of these enterprises at the time of privatisation:

Table 4.12: Number and Values of Privatised Companies (2004 - 2010)

Year	No. of Companies	Values (LD)
2004	11	31,571,434.278
2005	16	16,641,297.453
2006	24	644,077,621.500
2007	7	590,133,789.306
2008	13	185,790,687.468
2009	35	623,953,796.316
2010	9	20,087,346.00
Total	115	2,112,255,972.33

Source: Privatisation and Investment Agency, (2010).

Table 4.12 shows that the total number of privatised companies during the period (2004-2010) was 115 and the total amount that has been earned from the programme is approximately LD 2,112 million. In addition, as can be seen, there are variations from year to year in terms of the number of companies that were privatised; in 2009 the number of SOEs privatised was 35 companies, while in 2007 there were just 7 companies. It is important to mention that the number of companies that were privatised does not always reflect the true measure of the level of implementation. For example, in 2007, although only 7 companies were privatised, the combined value of these companies was about LD 590 million, which means that they were large companies. Meanwhile, in other years such as 2004, the privatisation agency

privatised 11 companies with a value of only LD 32 million; also, in 2005, 16 companies were privatised but their value did not exceed LD 17 million. Therefore, it seems clear that there are considerable variations in the size of the privatised companies, which was evident from the values of these companies.

In this context Table 4.13 illustrates the privatised companies according to their values, to ascertain the size of the companies that were privatised.

As can be seen, in Table 4.13, privatised companies differ greatly in terms of size. For example, there are 55 small companies; the assets value of each company does not exceed one million dinars, and the value of the privatisation of these companies collectively did not exceed LD 23 million. Meanwhile there are only 4 companies that could be considered large companies, as the assets value of each company exceeds LD 100 million, and the value of the privatisation of these companies collectively was more than LD 1280 million. Therefore it seems clear that the largest proportion of companies privatised represents small and medium-sized enterprises. This might be attributed to difficulties in the selling process as a result of the weakness of the private sector, as well as the size of the stock market which was created recently in Libya.

Table 4.13: Privatised Companies according to Assets Values (LD)

Assets values	No. of Companies	Privatisation values
Below 1 million	55	22,216,168.59
1 – 5 million	30	71,237,983.88
5 – 25 million	16	182,219,696.30
25 – 100 million	10	550,310,048.559
Above 100 million	4	1,286,272,076.000
Total	115	2,112,255,972.33

Source: Privatisation and Investment Agency, (2010).

Furthermore, available data demonstrate that the implementation of privatisation included enterprises in various sectors, as shown in Table 4.14.

As can be seen, in Table 4.14, the food industry had the largest share of the privatised companies, amounting to 20 companies, while only one company was privatised in the field of paper industries. The table also shows that the highest value for privatisation was in the building materials industry, where the value exceeded 880 million dinars from the privatisation of only 5 companies engaged in this activity, while the lowest value was recorded in the sectors of leather and paper industries,

where the values of privatisation were approximately LD 6.6 million and LD 6.5 million in these two sectors respectively.

Table 4.14: Privatised Companies according to Sectors

Sector	No. of Companies	Privatisation values (L.D)
Food industry	20	389,540,413.287
Engineering industries	17	100,999,020.110
Service activity	16	348,825,143.358
Chemical industries	14	137,749,524.000
Fishing and fish canning	10	11,473,515.000
Livestock production	8	87,479,853.000
Leather industries	7	6,665,074.000
Furniture and wood products	6	23,131,729.259
Textile industries	5	23,422,240.000
Electrical and home industries	4	13,592,262.316
Building materials industry	5	880,989,598.000
Electrical industries	2	81,862,600.000
Paper industries	1	6,525,000.000
Total	115	2,112,255,972.33

Source: Privatisation and Investment Agency, (2010).

Regarding the methods of privatisation, the agency of privatisation had adopted several methods such as management and employee buy-outs, selling through direct negotiation, public subscription, selling to investment institutions, and selling through the recently established stock market. The available data show that the most widely used method in the privatisation of SOEs in Libya, until the end of 2010, was the method of management and employee buy-outs, or the so-called closed subscription; 52 companies were privatised by this method, accounting for approximately 45 % of the total number of privatised companies, as shown in the Table 4.15.

Table 4.15: Privatised Companies and Values according to Privatisation Method

Method	No. of Companies	Value (LD)
Management and employees buy-out	52	46,566,316.203
Direct selling	29	120,475,455.316
Public subscription	18	149,379,304.811
Selling to investment institutions	15	1,725,834,896.000
Selling through stock market	1	70,000,000.00
Total	115	2,112,255,972.33

Source: Privatisation and Investment Agency, (2010).

The Table 4.15 demonstrates that 29 companies were privatised through direct negotiations with private investors, and 18 companies were privatised through public contribution, by advertising the sale of shares. In addition, 15 companies were

privatised for investment institutions, or what one might call strategic investors. It should be pointed out that the most important of these investors is the Fund of Economic and Social Development, which was established in Libya in 2006 to manage and follow up the investment of funds allocated to low-income Libyan families as part of a programme to elevate the standard of living of those families. Such a programme aims to produce social equality and justice, and to protect these families and compensate them for the negative consequences that may arise as a result of the country becoming a market economy (the role of this Fund will be discussed in detail later). Moreover, available data show that only one company was privatised by selling it on the stock market. This could be attributed to several factors such as the nature of most of the privatised enterprises; as mentioned earlier, most of them were small and medium-sized enterprises. The second reason could be the size of the Libyan Stock Market, which has been established recently, in 2008; it is still an emerging market, and might be unable to absorb a large number of shares were they to be offered. In addition, the highest value of privatisation has been recorded from the privatisation of SOEs to the investment institutions; the value of these exceeds LD 1,725 million, accounting for about 81% of the total value of privatisation, although the number of firms privatised by this method was 15, equivalent to about only 13% of privatised companies in total. The lowest value was for the companies privatised by the method of management and employee buy-outs; the total value has not exceeded LD 47 million, equivalent to only 2.2 % of the total value of privatisation, although the number of companies that were privatised by this method was 52, equivalent to about 45 % of the total number of privatised companies.

From data available, there seems to be a problem regarding the proportion of the value paid to the total value of the privatisation, as more than 40% of the total asset values of the privatised companies have not yet been paid, as shown in Table 4.16.

As can be seen, in Table 4.16, only 20 companies paid their full values, and 26 companies paid about 74 % of their total value on average. In addition, 29 companies paid just 33% of their total values on average. The situation looks even worse with about 40 other privatised companies, as the value of the privatisation of these companies is about LD 310 million, and the percentage of values paid is 0%. This

problem could be attributed to a series of difficulties faced by these companies, which eventually forced them to stop production.

Table 4.16: Proportion of Value Paid to the total Value of Privatisation

Statement	Companies	Privatisation values (LD)	Values paid	% values paid
Fully paid	20	157,600,603.49	157,600,603.49	100
Above 50% paid	26	1,327,287,403.99	985,381,127.86	74
Below 50% paid	29	317,973,087.90	106,012,379.08	33
Never paid	40	309,394,876.95	0	0
Total	115	2,112,255,972.33	1,248,994,110.430	%59

Source: Privatisation and Investment, (2010).

In this regard, a study conducted by the Privatisation and Investment Board in 2010 concluded that 11 companies stopped production, because they have been removed as a result of urban planning schemes. Also 29 companies faced several difficulties, leaving them unable to pay the value of privatisation; these difficulties include lack of capital, difficulty in accessing finance, obsolescence of machinery, inability to compete in the market, and lack of qualified employees. Moreover, the study mentioned that most of these companies were small, and were privatised by the method of management and employee buy-outs.

4.5 CONCLUSION

This chapter showed that the Libyan economy transformed completely over the last century, from being one of the poorest countries in the world that was suffering from a shortage of capital and was receiving aid, to a state which is achieving a financial surplus and is capable of financing plans and development projects. Libya became one of the largest exporters of crude oil in the world just eight years after starting to export this material. Proceeds received from exports of crude oil enabled the state to implement several social and economic development plans between 1963 and 1986. These plans were generally designed to achieve a number of goals such as creating the infrastructure, establishing a production base, reducing the dependence on oil, and achieving self-sufficiency. With regard to the results of these development plans, data confirmed that, although they have achieved some positive results such as the establishment of many infrastructure projects, and have provided a job opportunities for national employees, these plans did not succeed in achieving many other goals such as establishing a production base for self-sufficiency, or reducing dependence on

oil as the main source of income, despite the value of the massive investments that have been spent on this purpose.

This chapter also demonstrated that the Libyan economy has become a centrally planned economy controlled by the government for several reasons such as the implementation of large development projects which need large amounts of money that may not be available in the private sector, as well as the adoption of a socialist economic system at the end of the seventies. As a result, the public sector has become the dominant sector in all economic activities, and the role of the private sector has been marginalised for a period of about three decades.

This chapter discussed many issues related to the public sector such as its role in the Libyan economy, the negative consequences created by its dominance in all economic life, and the main reasons for these consequences. This was followed by a discussion on the privatisation of SOEs as a policy adopted by the former Libyan government to address public sector problems and improve the efficiency and productivity of SOEs. Thus, this chapter presented several issues related to the privatisation programme in Libya, such as the beginning of the programme, its goals, legal, administrative and regulatory frameworks, and the executive position of the programme. The next chapter develops on the foundational chapter through providing the initial analysis by examining the social impact of privatisation and how this was mitigated.

CHAPTER 5

A CRITICAL ASSESSMENT OF THE SOCIAL EFFECTS OF THE PRIVATISATION PROGRAMME IN LIBYA AND THE RESPONSIVE MEASURES

5.1 INTRODUCTION

The adoption of privatisation and the transition to a market economy aims to overcome the dominance of the public sector and inefficiency of the state in the allocation of available resources (Galal *et al.*, 1994). However, such a transition could also bring about many problems, which, among others, include potential social impacts. Such consequences should be taken into account, projected and handled with great caution; otherwise they may form obstacles to the success of privatisation or any reform programmes (Gupta *et al.*, 2001; Parker and Kirkpatrick, 2005). These negative effects may include job losses, price increases, monopolies, and other social consequences that may affect the poorer segments of society as a result of the reduction or elimination of subsidies and a reduced role for the state in economic life (Kikery, 1998; Gupta *et al.*, 2001; Fretwell, 2004; Peghetto, 2008; Kikeri and Nellis, 2002; Vickers and Yarrow, 1991). Accordingly, governments intending to adopt privatisation and a transition to a market economy should develop appropriate plans to address or at least mitigate these potential effects.

This chapter, therefore, investigates the extent of the former Libyan government's commitment to developing appropriate solutions to these problems. Firstly, it discusses the impact of economic transition in Libya on public sector workers and the methods of treatment adopted by the Libyan government. Then it discusses the impact of privatisation on consumer welfare, actions taken by the government to address the issue of subsidies, and compensation for poor people who might be more affected by the abolition of these subsidies. Finally, the issue of competition and consumer protection is discussed in this chapter, as well as the administrative and legal procedures that were established in Libya to deal with such issues.

5.2 ADDRESSING THE PROBLEM OF EMPLOYMENT REDUCTIONS

Privatisation as a policy or a tool of economic reform usually involves a significant reduction in employment, be it in the privatised enterprises or in SOEs nominated for the privatisation programme. Privatisation of SOEs might be the cause of the worsening unemployment problem and the other subsequent social and economic problems (Fretwell, 2004). This significant concern evidences the need to develop solutions and appropriate action by governments seeking to privatise public enterprises; otherwise, the privatisation programme will be exposed to many obstacles and problems, whether in the implementation stage as a result of dissatisfaction among public sector workers, who feel great concern about the future of their jobs, or in the post-privatisation stage, as ignoring the issue of layoffs can have negative social impacts (Gupta *et al.*, 2001; Bhouraskar, 1999).

Concerns about employment reduction are usually accompanied by reform policies and privatisation of public enterprises as one of the general characteristics of SOEs, which often have surplus labour. Surplus labour may be one of the reasons for the inefficiency of SOEs; therefore, in order to improve the efficiency of these enterprises it is frequently necessary to address this matter. In this context, Gupta *et al.* (2004) believe that most public companies will shed their surplus labour when privatised, even though the proportions of these reductions differ from one company to another. They suggest that public companies can be divided into three groups with respect to this subject.

The first set includes companies that have a good financial and productive position and are thus able to continue, improve their efficiency, and expand their activities. They believe that companies belonging to this group, even if subjected to some modifications or workforce reductions at the beginning of the transition process or privatisation, would be able to increase their rates of employment and create new job opportunities after achieving higher profitability and efficiency, and expanding their activities. Many empirical studies such as Galal *et al.* (1994) and Boubakri and Cosset (1998) have proved that, in most cases, the privatisation of state-owned enterprises has succeeded in increasing employment and creating new job opportunities in many developing and developed countries. The second group includes those companies that

could be viable in the long run but only with a permanently reduced labour force. Meanwhile, the third group includes public companies that suffer from many financial, technical and productivity problems that make it impossible for them to continue or survive. This sort of company is not usually attractive to private investors; therefore, they cannot be privatised, and governments are forced to liquidate them. Thus, the biggest challenge arising from the process of liquidating these companies is how to help the workers who will lose their jobs as a result.

It seems, therefore, clear that the problem of declining employment and job losses will be one of the possible negative consequences of privatisation, at least in the short term. In addition, failure to address this problem may lead to dissatisfaction among workers in SOEs in particular and society in general. This discontent or dissatisfaction may be an obstacle to privatisation as it could create strong political pressure on the government, thereby affecting the implementation of the programme (Kikeri and Nellis, 2002). Moreover, many social problems may result from the loss of jobs and increasing unemployment rates in society. Therefore, governments intending to privatise their public institutions, which usually employ large numbers of workers should take into account these possible outcomes and develop appropriate techniques to address this problem. Many previous studies, as outlined in the Chapter 3, indicated that numerous methods and techniques have been followed by many governments to address the problem of surplus labour, such as support for training and reintegration, restructuring after ownership change, voluntary departure and early retirement, and granting some of the shares to the workers.

5.2.1 Addressing the Problem of Surplus Labour in Libya

As previously mentioned in Chapter 4, Libya adopted a series of development plans, especially in the 1970s and 1980s, which were chiefly based on public sector institutions, and one of the important goals of these plans was to create job opportunities for the citizens (General People's Committee for Planning, 1980, 1985). Available data indicate that although these plans did not achieve all the desired goals, they really contributed in providing employment opportunities for the national labour force (Elzuni, 2003). In fact, some researchers such as Tapoli (2004), Fatory (2004), Alruyati (2004) and Futaishi (2005) believe that the focus on this goal produced a large

accumulation of employment in public sector institutions, which was one of the main reasons for the failure of the public sector in Libya. Therefore, it seems clear that Libya is no exception, and that the issue of surplus labour is a serious problem that needs effective solutions if privatisation and economic reform programmes are to succeed. Furthermore, the adoption of appropriate solutions and policies on this issue by the Libyan government is necessary not only to ensure workers' support, which is a prerequisite for the smooth implementation of the process, but also to address the negative social effects that may result from the privatisation policy; specifically it must not ignore the conditions endured by workers who may lose their jobs and slip into poverty and destitution. The former Libyan government paid explicit attention to the issue of surplus labour, and took several measures to develop appropriate solutions. It developed a set of plans to deal with this issue, and established specialised institutions and centres for the activation of these policies and solutions. Therefore, these measures can be examined with reference to two periods: pre-establishment of specialised bodies to address the issue of workers; and post-establishment of specialised bodies.

5.2.1.1 Pre-establishment of specialised institutions

After the launch of the privatisation programme in 2004 in Libya, the former government became aware of the importance of the issue of surplus labour and took a series of actions and decisions on the matter. The General People's Committee (Prime Ministry) issued the Resolution No. 39, in 2004, which required the Privatisation Agency to form committees to deal with the concerns of the workforces in companies and economic units targeted by the privatisation programme, and to overcome difficulties or problems which might be an obstacle to access to full economic operation after privatisation of these enterprises. Later, a Central Committee was formed under the Letter No.11959 on 25.11.2004, issued by the Assistant Secretary of the General People's Committee. This Committee consists of the Privatisation Agency, members of the General People's Committee of the Workforce and Training and Employment), and other members of the General People's Committee of Finance (Alhaddad, 2007). Based on these resolutions, the Privatisation Agency formed 6 sub-committees at the level of *Shabiat* (governorates) to conduct a study of labour conditions and treatment of surplus labour in SOE within the scope of each particular

Shabiat. These committees began their operations, following the launch of the privatisation programme, to study the conditions of workers in the targeted public sector institutions according to a specific mechanism based on a set of criteria as follows (Alhaddad, 2007):

- (i) The organisational structure of the unit or the company targeted for privatisation;
- (ii) The operating system and the number of production lines;
- (iii) Design and available production capacities;
- (iv) The number of workers specified by the executing company, at the construction;
- (v) The personal data of employees or workers, qualifications and years of experience.

As evidenced from the data available from the performance reports of the Privatisation Agency for the years 2005-2006, the operational procedures to address the issue of surplus labour can be summarised as follows (Privatisation Agency, 2005; 2006):

- (i) Total number of companies targeted for privatisation in this stage was 199, in addition to 14 public companies that have been liquidated;
- (ii) Total excess employment in these companies was 14,415 workers, who were screened and classified by the Privatisation Agency as follows:
 - a. The surplus labour in companies and production units targeted for privatisation amounted to 12, 263 workers;
 - b. The surplus labour in the departments of public companies under liquidation amounted to 2,152 employees.

The measures taken to address this surplus can be summarised as follows (Privatisation Agency, 2005; 2006):

- (i) 3,624 workers were placed in the public security sector;

- (ii) 9,302 workers were placed in administrative units in *Shabiat*;
- (iii) 133 were placed in the Oil Corporation and other companies subordinate to it;
- (iv) 766 workers applied for loans for the establishment of private projects although only 20 obtained these loans;
- (v) 206 surplus workers opted for early retirement;
- (vi) 67 workers resigned from their companies;
- (vii) 1,063 workers were referred to the General People's Committee of the Workforce and Training and Employment, for reassignment, according to several standards such as age and qualifications. It should be mentioned that the Privatisation Agency was committed to paying the salaries of these former employees until they obtain new jobs.

Therefore, it seems clear from the data that the Privatisation Agency had the primary responsibility of dealing with the issue of surplus labour in the period between 2004 and 2006; which was also responsible, via the committee formed for this purpose, for studies on conditions of workers in the units and public companies.

It should be noted that the studies carried out by the Privatisation Agency on the conditions of workers in public institutions play a positive role in the screening of surplus labour in these institutions and companies before transferring them to alternative jobs or offering them other solutions, as these studies help to avoid the draining of experienced and qualified staff from institutions and companies targeted for the privatisation programme. As mentioned in the Chapter 3, governments in some countries proceeded to offer alternatives to workers in order to deal with excess employment in public sector institutions without first conducting studies based on scientific grounds, thus resulting in the departure of many experienced and qualified staff from their enterprises. This had a negative impact on the sale of these enterprises and the interest of new investors on the one hand, and on the performance of these companies after privatisation on the other hand (Rama, 1999; Kikeri, 1998; Fretwell, 2004).

Moreover, from the data available, and as pointed out in the Chapter 4, this phase witnessed the privatisation and liquidation of small and medium-sized public companies, which is why the amount of surplus labour was relatively small compared to the number of companies targeted by the programme; the labour surplus amounted to 12,263 workers, while the number of privatised and dissolved companies at this stage was 213. In this regard, it should be mentioned that these numbers seem very small compared with the surplus of labour in the subsequent phase, as discussed in detail in the next section. The surplus of labour exceeded 400,000 workers from large companies and major sectors such as education and health, creating a big challenge for the Libyan government.

Although the numbers were relatively small, as mentioned above, the labour surplus problem was not addressed in a proper manner, as the bulk of the labour surplus was converted and placed in administrative bodies in *Shabiat*; this measure was not a real solution but a transfer of the surplus from state companies and public economic units to administrative bodies of the state remained a temporary solution. Moreover, despite the establishment of a Production Fund intended to provide loans and commercial and production facilities to support and encourage excess labour to engage in private production projects, only 20 out of 766 (as mentioned in Privatization Agency report) workers were granted loans, probably because of certain difficulties relating to the conditions and guarantees required by the fund for providing these loans, which former employees of the public sector might have found difficult to meet.

5.2.1.2 Post-establishment of specialised institutions

In this phase, the Libyan government began working on the restructuring of larger companies compared to the first phase, in addition to the restructuring of large sectors such as health and education in preparation for their subsequent privatisation (Privatisation Agency, 2008; Futaisi, 2008); thus, there was a large amount of surplus labour in these companies and sectors. Therefore, the General People's Committee (Prime Ministry) began to undertake the necessary measures and the establishment of institutions required to deal with the issue of surplus labour at this stage in order to avoid any obstacles or potential negative effects of the privatisation policy.

5.2.1.2.1 National Centre for Training and Career Development

In March 2007, the General People's Committee issued the Resolution No. 188 of 2007 for the establishment of the National Centre for Training and Career Development to deal with the issue of surplus staff arising from of the restructuring of public companies and public units in vital sectors such as education and health. According to the establishment decision, this Centre is a public institution, which reports directly to the General People's Committee for workforce, training and employment, and aims to achieve the following set of goals:

- (i) Training of surplus labour from state enterprises and public units;
- (ii) Development of the labour market, creating job opportunities for the national workforce, and increase their productivity;
- (iii) Achieving the goals of the employment policy.

In addition, this Centre has a set of tasks and functions defined by the mentioned resolution, which can be listed as follows:

- (i) Paying the salaries for the entire labour surplus, who were referred from public units and enterprises, in addition to the training allowance;
- (ii) Sorting and classification of files of workers according to qualifications, specialisation, experience, gender and age in order to retrain them and place them in alternative jobs;
- (iii) Development of training plans for the labour surplus according to available occupations and the needs for the labour market in coordination with the competent authorities;
- (iv) Organising short and medium-term training courses for the labour surplus;
- (v) Establishing contract with the approved public and private training institutions;
- (vi) Coordination with the department of employment in the General People's Committee for Workforce, Training and Employment to fill job vacancies in both non-funded institutions and public administrative units;

- (vii) Coordination with banks and specialised financial institutions, to provide loans and facilities necessary for establishing various economic activities, to employees who wish to borrow;
- (viii) Undertake the necessary legal procedures regarding employees, in the case of the illegality of their files.

5.2.1.2.1.1. The Performance of the National Centre for Training and Career Development

With regard to the performance of the National Centre for Training and Career Development, data only exist and available in the performance reports of 2007 and 2008, as it existed for only two years; as the Centre was created in March 2007 and then dissolved in February 2009 under a resolution by the General People's Committee.

The Performance in 2007

The Centre's report for 2007 shows that personnel files transferred to the Centre from various sectors reached 187,113. Furthermore, the report also states that the salaries were paid regularly each month for these employees to avoid the possible negative effects of the restructuring and privatisation of public companies and institutions. However, the report notes that the salaries of about 13,000 workers were stopped after the discovery of some irregularities in their files, such as duplication of work, access to loans for the purpose of the establishment of projects, or obtaining licenses to practise private activities. As a result, the actual number of surplus workers who received their salaries from the Centre fell to 174,113 (National Centre for Training and Career Development, 2007).

Furthermore, the Centre prepared a plan to address this surplus labour in coordination with the General People's Committee for Workforce, Training and Employment for the reassignment of 113,203 employees in various sectors such as health, security services, and national and foreign companies. This plan also included a range of alternatives to address the problem of the remaining labour surplus, which amounted

to 60,910 employees (National Centre for Training and Career Development, 2007). These alternatives were varied, and can be summarised as follows:

- (i) Establishing training plans to train part of the workforce, qualifying them to engage in areas that require specific qualifications and training;
- (ii) Coordination with banks and financial institutions to grant loans to help in the creation of private economic projects;
- (iii) Adopting the early retirement programme, as the Centre has proposed that any employee reaching the age of 55 years for males and 53 for females be entitled to apply for early retirement. In addition, the net salaries will be paid at once for the period remaining until retirement age which, according to the law, is 62 for males and 60 for females;
- (iv) Coordination with the Economic and Social Development Fund to allocate investment portfolios for employees over the age of 46 (both men and women) who do not have high qualifications.

The Performance in 2008

A year after the Centre had been established, the available data indicate that the number of surplus workers reached 405,676 employees (National Centre for Training and Career Development, 2008). The Centre's report for 2008 indicates that this number includes the 308,960 surplus employees from the major public sectors such as education and health, while 84,099 employees were hired earlier by the executive departments in *Shabiat*, before being laid off and transferred to the Centre. Finally, about 12,617 employees were transferred to the Centre from the public companies that have been liquidated. Moreover, the report shows that the process of review and scrutiny of files and documents resulted in the discovering that about 16,719 employees had many problems and legal violations such as duplication of work, access to loans for the purpose of the establishment of projects, or obtaining licenses to practise private economic activities (National Centre for Training and Career Development, 2008). In addition, the report indicates that the number of workers who retired or resigned since the beginning of the Centre's work in March 2007 was 2,919,

which means that the Centre stopped the payment of salaries of about 19,638 employees; thus the actual surplus labour was amounted to about 386,038 employees.

In addition, the Centre, in coordination with the General People's Committee of the Labour Force, designed an integrated programme including four mechanisms, namely employment, training, lending, early retirement, to deal with surplus labour. The General People's Committee (Prime Ministry) adopted this programme. Available data indicate that the results of this programme can be summarised as follows (National Centre for Training and Career Development, 2008):

- (i) The Centre reassigned more than 102,000 employees to cover the qualitative and quantitative deficit in the institutions of education and training, health, various security services, and national and foreign companies;
- (ii) Until the end of 2008, 13,614 workers continued their employment in national public and private companies, as well as foreign companies, in accordance with the licenses granted to them;
- (iii) Regarding the training of surplus labour transferred to the Centre, only one training course in 6-month could be held, which was in the field of computer science; it targeted about 4,000 workers who had computing diplomas;
- (iv) With regard to the lending programme, the report indicates that this programme had not been activated due to non-allocation of the amounts necessary to the Lending Fund, which was established for this purpose;
- (v) Regarding the mechanism of early retirement, the report indicates that, at the end of 2008, the Centre began to receive requests from employees, asking the General People's Committee to issue a decision in this regard. It should be noted that the mechanism for early retirement had not changed, with respect to the payment of salaries for the remaining period to retirement age, all at once or in installments according to the desire of the employee.

As the material discussed in this section demonstrate, the data contained in the Centre's reports from 2007 and 2008 that the surplus labour from public units and institutions was very large, reaching to 405,676 employees in total. This means that

the issue of surplus labour is very important and must be addressed seriously so that it does not become an obstacle to the reform and privatisation programmes adopted by the government. This is particularly important to avoid the negative social consequences of the reforms, which may outweigh any positive economic and financial results. Furthermore, as the discussion shows the former government was very interested in the issue of surplus labour, which is evident from the establishment of this specialist Centre, and attempts to develop an integrated programme including several alternatives that may be suitable to solve this problem. Moreover, it seems clear that the Libyan government was committed to the financial rights of the surplus labour in terms of salaries, bonuses, training costs, or others.

Although the development of plans and programmes includes a range of alternatives and solutions to address the issue of surplus labour, the available data indicate that the Centre could not have achieved the targets set by these programmes on the ground. Available data from the Centre's performance reports indicate that the surplus labour amounted to about 187,000 employees in 2007, increasing to more than 405,000 in 2008. Although the Centre had a plan to reassign more than 113,000 employees in the year 2007, the report in 2008 indicates that the number of employees who were actually reassigned from the beginning of the Centre's work in March 2007 to the end of 2008 was only around 102,000, spread over various sectors and companies. Thus, it seems clear that the Centre could not have placed all the workers included in the reassignment plan of 2007 in their new posts. According to data contained in the reports on the performance of the Centre, this shortcoming could be due to several factors including the lack of cooperation by some relevant authorities, complexity in the process of reassigning these employees and, in many cases, the unwillingness of employees to attend work in new locations (National Centre for Training and Career Development, 2007, 2008). Furthermore, available data indicate that the Centre had not succeeded in activating the other alternatives and solutions for the surplus labour problem. In 2007, there was a plan that included a range of alternatives such as training and early retirement; however, it was not implemented. Also, in 2008, there was only one training course for about 4,000 workers, or only 1% of the total surplus of labour. Moreover, the other programmes such as lending and early retirement were not been activated or operationalised.

Finally, it can be stated that the period of two years may have been too short to conclude that the Centre had failed to carry out its tasks and achieve the desired goals, but the nature of the task and the large number of surplus workers required quick and solid action on the ground rather than merely devising plans and programmes, for a period of two years, without activating them. However, the closure of the Centre could also be related to the unwillingness of the administration in dealing with such a huge problem.

Dissolving of the National Centre for Training and Career Development

Almost two years after the establishment of the National Centre for Training and Career Development, the General People's Committee issued, in February 2009, Resolution No. 192 of 2009 to dissolve this Centre. The General People's Committee (Prime Ministry) stressed in this resolution its continuing full commitment to addressing the labour surplus problem, reaffirming that it would continue to pay the workers' salaries without delay, which also stressed the need to activate appropriate alternatives and solutions to address the surplus of labour. Article 3 of this resolution stated the necessity of activating the programme of early retirement, with full commitment to pay the net salary, for the remaining period, of workers who wished to adopt this programme, until they reached the age prescribed by the law to retire. Moreover, the resolution pointed to the need to deal seriously with the remaining staff by reassigning them to national and foreign companies, thus contributing to the implementation of the development programme in Libya. It should be noted that the General People's Committee, after this resolution, formed a central committee to develop a mechanism for the implementation of the alternatives, which actually began with the preparation of statistical data on the labour surplus in terms of age, qualifications and experience to facilitate the process of placement, according to actual needs and personal desires; which implies that this committee began the implementation of the previous tasks of the dissolved Centre.

Therefore, it seems clear that the failure of the National Centre to achieve quick and positive results impelled the Libyan government take faster action to dissolve it. However, the government reassured the workers about the continuity of financial transactions.

To explain this resolution, the General People's Committee issued a statement pointing out that the approval for the establishment of this Centre was based on the view of the General People's Committee for Manpower, Training and Employment, in order to retrain surplus staffing of the units and public institutions. However, the General People's Committee noted that the Centre had not achieved its goals such as developing training plans for the surplus labour, and coordination with the targeted institutions such as national and foreign companies, investment funds, financial institutions and banks to absorb this surplus. Instead, however, the Centre was engaged in receiving thousands of personnel files, especially of those who had been appointed in suspicious and undeserving circumstances in *Shabiat* earlier. As a result, the amount of surplus labour at this Centre was increasing every day instead of decreasing through the activation of solutions to the problem. This confirms the need to study this matter and put an end to practices that contradicted the tasks and targets of the Centre.

Furthermore, the General People's Committee indicated that the worst aspect is the emergence of many problems that confirm the existence of administrative and financial corruption at the Centre. Therefore, the General People's Committee indicated that it had no option but to rectify the situation and find a mechanism to address the conditions of workers referred to the Centre, while continuing to pay salaries without delay until these workers had found suitable jobs according to their desires, ages and specialisations, rather than remaining out of work or the productive process (General People's Committee, 2009).

5.2.1.2.2 Department of Labour and Vocational Training

In April 2009, the General People's Committee issued Resolution No. 124 of 2009 for the establishment of a new body under the direct supervision of the General People's Committee, called the Department of Labour and Vocational Training. According to the establishment resolution, this department is not much different, in terms of functions, from the dissolved National Centre. Although one of its tasks is coordination with the relevant authorities to address the issue of the labour surplus, this department is concerned primarily with training and employment for job seekers,

as well as having many new tasks related to the labour market, which can be summarised as follows (General People's Committee, Resolution No. 124 of 2009):

- (i) Follow up the implementation of legislation related to employment, especially the measures to bring in national labour to replace foreign labour in various sectors and activities, ensure the commitment of those bodies to established policies in this regard, coordination with the relevant authorities to ensure the availability of employment opportunities for national labour, and make the necessary proposals in this regard;
- (ii) Preparation of studies and plans to ensure the creation of real jobs in cooperation with various sectors, and develop and regulate the labour market to achieve a balance between demand and supply;
- (iii) Employ the results of studies conducted by the department to develop public and private educational and training institutions, and determine the appropriate mechanism to connect the output of these institutions and labour market needs;
- (iv) Organising the process of employing foreign workers by specifying the occupations prohibited for foreigners, following up and inspecting the various institutions to ensure compliance with minimum ratios prescribed for the use of national employment, and ensuring that foreigners are not employed in prohibited occupations;
- (v) Arranging of other tasks related to training centres such as developing the criteria for granting approvals and licenses for these centres, and monitoring and controlling the quality of services.

As the discussion indicates, the decision to establish this department, which aimed at mainly developing a mechanism and solutions to address unemployment in Libya; thus, unlike the dissolved National Centre, it was not established just to address the problem of workers who have been laid off from the public sector enterprises. However, Manfor, the Head of the Department, points out that, although the priority of the department is to pay great attention to training and employment in order to provide employment opportunities to job seekers, addressing the problem of former

public sector workers is also one of the main tasks of the department, which can be achieved through coordination with the relevant authorities to activate the appropriate solutions such as the early retirement programme, granting of investment portfolios, and granting compensation for early retirement (Manfor, 2010a).

The Department of Labour and Vocational Training was dealing with a very large number of Libyan nationals, more than 450,000 people, in the labour market (Department of Labour, 2010). This number can be divided into two groups or two categories. The first category includes job seekers, people who have never had a job in either public or private institutions. The real size of this group was about 100,000 people, who were officially registered as job seekers and are mostly aged between 18 and 25 (Manfor, 2010b). Manfor, the Head of the Department, points out that this group includes young people, who should receive the greatest attention and priority in terms of training and the provision of job opportunities to ensure their future (Manfor, 2010b). Meanwhile, the second group included former employees in public sector institutions, who were laid off as a result of privatisation or the restructuring of some sectors to prepare them for privatisation. This category included about 350,000 people. Thus, it seems clear that this category represents a major challenge for the government in its attempts to implement programmes of economic reform; to address the needs of this category, appropriate and effective solutions must be properly developed.

With respect to the performance of the Department of Labour and Vocational Training, the available data indicate that the department made good efforts to provide job opportunities to job seekers. However, the labour surplus issue is still a major problem and there was no effective treatment as of the end of 2010. The report of the department for the year 2010 indicates that the department adopted a variety of methods to address the first category; the job seekers group (Department of Labour, 2010). The most important method was to employ national job seekers in national and foreign companies, according to the legislation in this regard. The Libyan Labour Law emphasizes that national workers must account for at least 30% of the total employees in companies working in Libya. Accordingly, the Department of Labour and Vocational Training launched several employment campaigns in 2010, aiming to provide 40,000 jobs for job seekers (Department of Labour, 2010; Manfor, 2010a).

The first campaign offered 5,000 jobs, while the second campaign aimed to employ 15,027 people; the third and the fourth campaigns targeted 10,768 and 10,000 jobs respectively. Available data indicate that about 70% of these offered opportunities had actually been taken up (Department of Labour, 2010). However, the target was not fully achieved, mostly due to the failure of job seekers to seize the offered opportunities. Manfor (2010a) explains that this may be because of the nature of these jobs. Most of these opportunities were concentrated in foreign firms recently arrived in Libya, which operate mainly in the construction and infrastructure sectors; such jobs may not be within the preferences and capabilities of many job seekers.

The plan for training programmes has been adopted with specific goals and orientations, and the output of the training programmes should be compatible with the needs of the labour market. These programmes were called ‘training for the purpose of employment’ and already began in collaboration with some of the specialised training centres, such as the Libyan and Korean Centre in the city of Tripoli and the Libyan and Chinese Centre for Vocational Training in Benghazi. These two Centres trained many job seekers, who were placed, immediately after the training courses, in jobs in several national and foreign companies. There were various training programmes including, for example, those, in companies and large public projects such as the electricity company and the river company for the manufacture of pipes, as well as other training centres (Department of Labour, 2010). However, the number of trainees on these courses was relatively small compared to the total number of job seekers and those laid off from the public sector; the data indicate that the number of job seekers enrolled in these courses did not exceed 2,000 people, equivalent to about 2% of the total number of job seekers, and did not exceed 0.5% of the total registered in the department, be they job seekers or workers laid off from the public sector (Department of Labour, 2010).

With regard to addressing the issue of surplus labour transferred from the public sector, Manfor (2010b) indicates that the Department attempted to re-employ some of the surplus workers in development projects, but unfortunately these efforts faced many difficulties such as the age issue, as most of the laid-off workers from the public sector are aged over 35 years, and it is thus difficult to re-train them for employment in the new businesses. The second difficulty was that about 80% of the surplus labour

were women, and most of the jobs on offer suit men's capacities according to Libyan norms, as they were often associated with the infrastructure sector. Thus, the social treatment may be the most appropriate measure; accordingly, the door for early retirement was opened, and available data indicate that about 20,000 former public institution workers took the advantage of this method (Department of Labour, 2010).

Furthermore, the available data indicate that the granting of shares to former employees in the public sector was one of the adopted methods, in this period, to address the surplus of labour. This method gives shares in large, successful companies to workers laid off from the public sector by granting investment portfolios through the Economic and Social Development Fund. The Fund's report indicate that the number of portfolios given to former employees amounted to 31,278 by the end of 2010 (Economic and Social Development Fund, 2010).

Although the labour department was created recently, it seems clear that it made good efforts, especially in terms of providing employment opportunities to job seekers; it launched a series of campaigns that aimed to provide 40,000 jobs, which managed to reach about 70% of the target. However, it could not activate processes and solutions to the problem of surplus labour or workers laid off from the public sector, which is actually a real problem. It should be noted that this category is a significant burden on the state budget, which is responsible for paying the salaries of these workers without receiving any production or work in return. Moreover, the delay in addressing this dilemma may cause very serious concern among workers; this may cause major problems that can hinder the process of economic reform and privatisation of public sector institutions.

In addition, it seems clear that the Department mainly adopted just one method, which is the employment of job seekers in companies, especially foreign companies. This method might be appropriate as it represents a real opportunity to train the national workforce and to give them good experience in certain areas. However, it may not be desirable because most of these companies are working in the construction and infrastructure sector which often operates with short- and medium-term contracts; thus, this method may only offer jobs for a limited period.

Therefore, it seems clear that despite initiating the privatization programme, Libyan government faced major challenges, which will continue for the years to come. Considering that establishing specialised centres and developing plans to address surplus labour and the problem of job seekers, it still remained and remains a very serious challenge to the post-Revolution period. Thus, it may be worthwhile focusing more on the activation of other alternative treatments, such as compensation for leaving work, and granting shares in profitable companies, as well as the development of the private sector, which will play an important role in absorbing a large part of the surplus labour.

5.3 THE IMPACT OF PRIVATISATION ON CONSUMER WELFARE: THE QUALITY AND PRICES OF PRODUCTS

Privatisation, both in its narrow sense of ‘the transfer of ownership of public enterprises’ and in a broader sense of the transition to a market economy with greater reliance on the private sector in economic life, may have negative effects on consumers in terms of the impact on the quality and price of products in the market, especially in the absence of competition in the market, or in the case of rapid transformation and the abolition of the state’s role and subsidies in the economy without making appropriate plans to stimulate competition and secure a social protection network (Khemani, 1999; Parker and Kirkpatrick, 2005; Beghetto, 2008).

Privatisation is supposed, if properly applied, to increase the efficiency of enterprises after the transfer of ownership or management to the private sector. In addition, it will increase competition resulting in positive impact on the prices and quality of the products of these enterprises (Gupta *et al.*, 1999; Galal *et al.*, 1994). However, most countries that had relied heavily on the public sector usually subsidised the products produced or traded by the public sector institutions. Therefore, the privatisation of public enterprises and reduction of the state’s role in the economy meant the reduction or elimination of these subsidies, which led to higher prices for these products, and the consumers and beneficiaries of these subsidies were affected. In other words, the poorer categories of society are greatly affected by policies of privatisation and economic reform.

In order to mitigate such adverse effects, government can adopt some policies. For example, governments can reduce the subsidies gradually to give consumers time to adapt to the new situation. It is also possible to provide limited subsidies with good control to ensure access for those in need. Finally, they can adopt a policy of cash benefits rather than reducing prices (Gupta *et al.*, 1999).

Moreover, the negative effects of privatisation and transition to a market economy may be reflected clearly in prices and quality of products in the market, in the case of weak competition in the market (Vickers and Yarrow, 1991; Khemani, 1999). Therefore, many authors such as Gupta *et al.* (1999) and Beghetto (2008) suggest that privatisation be accompanied by the provision of a competitive environment, which can be created by adopting policies of market liberalisation and developing appropriate mechanisms to regulate and supervise the market. In this context, Khemani (1999) and Beghetto (2008) believe that such mechanisms should include the development of appropriate legislation for competition and to prevent monopolistic practices, and the creation of an effective body to protect competition. The creation of independent agencies would also work to protect consumers in the market economy.

Therefore, it seems clear that privatisation and the reduction of the state's role in the market require certain conditions to mitigate the negative social effects that may occur. These conditions include the adoption of an appropriate policy on the issue of subsidies, addressing the situation of the poor who may be affected as a result of the reduced role of the state and the abolition of subsidies on some goods and services. In addition, it is necessary to provide a favourable environment for competition by the imposition of competition law, and to create an effective body or council to prevent unfair acts and monopolistic practices. It is also necessary to create independent bodies and agencies in order to protect consumers with regard to prices and quality products in the market.

5.3.1 Policies of the Libyan Government

It may be possible to state that the Libyan government's privatisation policies, or the transition to an economy more reliant on the private sector, may have had some adverse effects on the consumer in certain cases. Realising this, the former

government in recent years took a series of measures and arrangements to mitigate these possible effects. These measures can be divided into two groups: the first group includes a package of financial and administrative measures that have been adopted to address the issue of subsidies and to compensate those people who may comparatively be more affected by the removal of subsidies and the reduction of the state's role in the economy. The second group includes the administrative and legal measures taken by the government to protect consumers by imposing competition and preventing monopolies, so there are no serious negative consequences as a result of the transition to a market economy and reliance on the private sector. These measures can be summarised as follows:

5.3.1.1 Addressing the issue of subsidies and compensating the affected groups

To avoid serious harm to the poor in society, who are more likely to be affected by the policy of reducing subsidies and the shift to an economy dominated by the private sector, the Libyan government has taken a series of measures such as the gradual reduction of subsidies provided by the state, creating institutions, and taking measures that will compensate poor people for the reduction of subsidies. In compensation, the Libyan government began to grant investment portfolios, which include shares in profitable companies in the Libyan market. A specialised investment fund was established to manage and invest these portfolios for the benefit of poor people in society. Values of these portfolios range from LD 30,000 to LD 50,000, equivalent to \$ 24,000 to \$ 40,000, with the possibility of receiving monthly returns from these investments. This policy aimed at helping the government to reduce commodity subsidies, on the one hand, and contribute to the process of expanding the ownership base of economic institutions on the other. As can be seen, the government did pay great attention to the social aspects in conjunction with economic transformation.

Procedures and policies that adopted to address the issue of subsidies and compensate the affected groups can be discussed in detail as follows:

5.3.1.1.1 The gradual reduction of subsidies

The adoption of the subsidies policy has burdened the general budget with large expenditure that increased every year and led to the misuse and waste of state resources. The policy adopted by the Libyan government for decades included direct

subsidies and indirect or implied subsidies. Direct subsidies were applied to many commodities that were monopolised by the state and sold at prices much lower than their real value, such as flour, sugar, rice, semolina, pasta, tomatoes, oil, tea, and other basic goods. Indirect subsidies, on the other hand, involved reducing the prices of some services and goods such as fuel, natural gas, electricity and water (General People's Committee for Economy *et al.*, 2009; Huweij 2011).

Therefore, to address this situation the General People's Committee for the Economy (Economy Ministry) prepared several proposals as alternatives to commodity subsidies. These proposals have been put forward for discussion on several occasions, both at the General People's Committee (Prime Ministry) and in discussions among the general public in the Basic People's Congresses "being a legislator and the decision-maker in the Libyan regime" (General People's Committee for the Economy *et al.*, 2009). Accordingly, the General People's Committee issued Resolution No. 46 for the year 2007 to implement the decisions of the Basic People's Congresses in its regular session in 2006. This resolution provides for replacement of commodity support with cash support, provided it is done gradually (General People's Committee, Resolution 46 of 2007). The implementation of this resolution began in 2007, and commodity subsidies were limited to certain goods, namely flour, semolina, rice and pasta. In addition, fuel prices were raised by about 22% under the General People's Committee Resolution No. 116 in 2005. On the other hand, the salaries of all employees in public institutions were increased by 25% of net salary, and there were a increases in some bonuses (General People's Committee, Resolution 62, 2007).

As the discussion indicates the Libyan government made its decisions in accordance with the policy of gradual reduction of subsidies; it was decided that the abolition of subsidies would be limited to certain food items such as tomato, oil and sugar, while subsidies on the remaining staples such as flour, rice, semolina and pasta would remain. In addition, subsidies continued on many of the necessary services and goods such as fuel, electricity, natural gas and water, despite the modest increase in the price of fuel.

Although the state pursued a policy of gradual reduction of subsidies, as depicted in table 5.1., the value of these subsidies is still very large, and it is still a heavy burden on the public budget.

Table 5.1: Subsidies from the Libyan Government 2001-2010 (LD millions)

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Subsidies	301	499	728	832	1050	1050	1006	1003	3302*	3352*
% to GDP	1.7	2	2.4	2.1	2.5	2.2	2.4	1.7	11.5	10.3

Note: (*) Before 2008 figures include subsidies on food, medical care, but since 2009 figures also include fuel, electricity and water.

Source: Finance Ministry, various reports.

As shown in table 5.1, although the subsidies reduced slightly in 2007 and 2008 as a result of the abolition of subsidies on some goods, they still generally constitute a significant burden on the budget, particularly with respect to subsidies on the prices of electricity, fuel and water.

5.3.1.1.2 Establishment of Balancing Prices Fund

In the context of protecting consumers from high prices as a result of the removal of subsidies on some commodities, the General People's Committee issued Resolution No. 410 of 2008, to establish a 'Price Balancing Fund', which has a set of goals and tasks that can be summarised as follows (General People's Committee, Resolution No. 410, 2008):

- (i) To balance the prices of basic goods and services;
- (ii) To study and propose ways to help determine appropriate prices for goods and services, and provide recommendations to the competent authorities to take appropriate decisions;
- (iii) To follow up the international and domestic prices of basic goods and services, and prepare periodic reports in this regard;
- (iv) Coordination with the tools of economic activities, to ensure maintenance of an adequate stock of basic commodities, which may be subject to sharp fluctuations in prices, as determined by the regulations of the Fund.

Huweij (2011), secretary of the General People's Committee for the Economy, states that the basic idea of creating the Price Balancing Fund is for the state to intervene and provide temporary subsidies on commodities that increase in price significantly. Available data indicate that this intervention actually took place in 2010; the prices of some commodities such as oil and sugar were reduced and the public treasury bore approximately 30% of the price of these commodities. This was the first intervention since the abolition of subsidies on these commodities at the beginning of 2007, and the cost of these temporary subsidies was about LD 170 million (Price Balancing Fund, 2010). Huweij (2011) explains that the amount paid in 2010 was intended to address the global rise in the prices of these commodities and goods. Therefore, he believes that the role of the state through this fund is to mitigate the impact of the global rise in prices on Libyan consumers.

As can be seen, the Libyan government paid great attention to the issue of subsidies granted to citizens, as it adopted a policy of gradual reduction of subsidies, and continued to subsidise the prices many food commodities, fuel, electricity and water. At the same time, it made the decision to increase the salaries of employees in government sectors, as a first step to replacing commodity subsidies with cash support. Furthermore, the government created a Price Balancing Fund in order to protect consumers from any sharp rises in world prices for some commodities.

It should be mentioned that the government took a series of measures to compensate some groups in society who are likely to be more affected by the abolition or reduction of subsidies, especially those groups who receive low incomes, such as pensioners or retirees. The most significant of these measures was the establishment of the Economic and Social Development Fund (ESDF), which aims to provide funds to poor families in Libya. The next section will discuss the establishment of the fund, its objectives and its performance in detail, as this is considered a capacity building attempt rather than provision of welfare.

5.3.1.1.3 Establishment of the Economic and Social Development Fund (ESDF)

The Economic and Social Development Fund was established under the General People's Committee Resolution No. 18 of 2006, and began its activity in August 2006 (ESDF, 2011) with the objective of supporting and helping poor families and

those most vulnerable in society. This programme has been called the ‘program of wealth distribution to the disadvantaged poor families’. This is relevant to the consequences of privatisation, as it was expected that, due to price increases as well as redundancies resulting from privatisation, there would be a need to protect people from the lower economic strata.

As a first phase, the fund allocated an amount of about LD 4 billion to those families as part of their share of the wealth of society. Later, the government developed a plan to invest this money, and later it was increased to more than LD 10 billion by the government.

This plan aims to establish an investment programme for the poor rather than distributing money directly to these families (ESDF, 2009) as it is argued that, because of their economic and financial needs, these individuals are likely to immediately consume any allocations made to them, further jeopardising their future welfare; therefore, investing on their behalf is considered an important welfare policy. Thus, as mentioned, the Fund aimed at building capacity to enable citizens to become a stakeholder. Accordingly, the Economic and Social Development Fund was established; it assumed its tasks in August 2006 as a financial investment institution working for the benefit of poor families. The most important tasks of the Fund can be summarised as follows (ESDF, 2009):

- (i) Management of funds allocated to the poor and low-income families;
- (ii) Investing this money in different investment areas;
- (iii) Organization and composition of investment portfolios.

Therefore, the main objective of this Fund is to invest the money allocated to Libyan limited-income families in order to achieve equality and social justice in society, and contribute to improving the social conditions of these families through the development of their investments, maximising the returns, especially in light of changes were taking place in the Libyan economy. In addition, this Fund enables this section of society to participate actively in the programmes of economic and social development in Libya (ESDF, 2009) with the objective of capacity-building.

As regards to the beneficiaries of the programme, this investment programme targets all poor families and those on limited incomes, who really need to improve their standard of living, especially families in the following categories:

- (i) Basic pensioners (families consisting of 3 members or more);
- (ii) Retirees who have families consisting of 3 members or more, with incomes no greater than LD 200 monthly;
- (iii) Families with limited incomes not exceeding LD 200 per month.

Regarding the composition of investment portfolios of the programme, the decisions and the working mechanisms of the investments made by the Fund on behalf of the deserving families are based on the following (ESDF, 2011):

- (i) Issuance investment documents given directly to beneficiaries of the programme (mentioned above);
- (ii) the value of the investment document is LD 30,000 rising to LD 50,000 (depending on the number of family members);
- (iii) investment period is only 5 years, but is renewable;
- (iv) at the end of the specified period of investment, beneficiaries are able to recover the value invested and remaining returns, or re-invest their money;
- (v) evaluation of the investment portfolio, on the due date, should be in the stock market, using accepted accounting methods;
- (vi) the Fund is responsible for managing the portfolio, and takes 2% of net revenues as service fees;
- (vii) monthly cash payments are paid directly to the beneficiaries at the expense of expected returns, and will be settled later at the end of the investment period. These amounts are expected to be deposited directly into the bank accounts of beneficiaries, according to the number of family members, as shown in Table 5.2.

Table 5.2: Monthly Cash Distributions according to the Family Members

Statement	Monthly cash distributions (LD)
Families with 3 members	300
Families with 4 members	400
Families with 5 members or more	500

Source: ESDF, annual report, 2009.

(viii) Holders of portfolios have a range advantages such as using the investment document and returns as collateral for mortgages and family project loans. In addition, they have priority in accessing medical treatment, education and training;

As for the investment allocations, the process of creating investment portfolios was preceded by a social survey carried out by the Social Solidarity Fund, which resulted in the targeting of a number of families in this programme. Later, in the beginning of 2007, the Economic and Social Development Fund began to form the investment portfolios for these families. Available data indicate that the number of investment portfolios that have been distributed to the beneficiaries, up to 09/30/2010, is 248,007, and the value of each ranges from LD 30,000 to LD 50,000 (depending on the number of family members). In addition, the Fund issued 449 investment portfolios of LD 30,000 for orphans under a programme called the Social Welfare Portfolio. Thus, the total number of investment documents or portfolios was 248,456 (ESDF, 2010). These documents were distributed to beneficiary groups as shown in Table 5.3.

Table 5.3 illustrates that the largest benefit category was the retirees, as the number of investment portfolios distributed to this category was 91,248, equivalent to approximately 37% of the total portfolios. Moreover it seems clear, from the table and graph, that the Fund distributed a large number of portfolios, exceeding 78,000 and equivalent to about 31.5% of the total, to families that do not have salaries and have no permanent jobs, be they in the government or private sector. Furthermore, it is clear that this Fund contributed to addressing the issue of surplus labour, *i.e.* those who have been made redundant from the public sector institutions, as it has distributed more than 31,000 portfolios to this category, equivalent to approximately 12.6 % of the total.

Table 5.3: Investment Portfolios Distributed in accordance with Beneficiary Groups

Statement	Number	%
(Program of wealth distribution)		
Basic pensioners	42,961	17
Retirees	91,284	37
Families do not have pensions	78,146	31.5
Needy families (with low income)	4,338	1.7
Surplus labor (former employees of the public sector)	31,278	12.6
(Social Welfare Portfolio)		
Orphans	449	0.2
Total	24,8456	100

Source: ESDF, annual report, 2010.

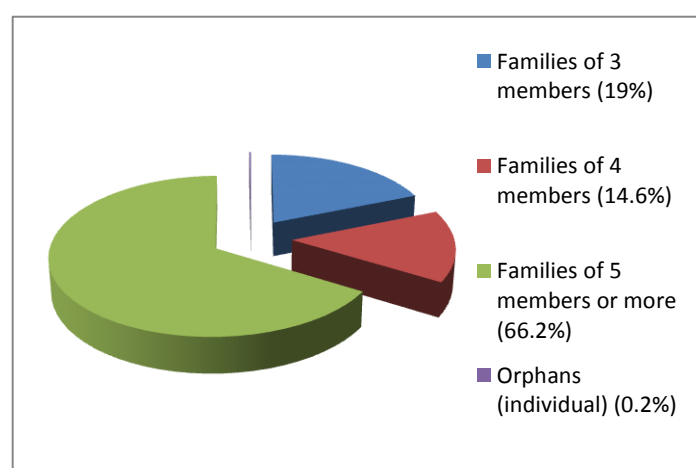
Distributed investment portfolios can be divided according to the number of individuals in each family, as shown in table 5.4.

Table 5.4: Investment Portfolios according to Individuals in Beneficiary Families

Statement	Number
(Program of wealth distribution)	
Families consist of 3 members	46,971
Families consist of 4 members	36,510
Families consist of 5 members or more	164,526
(Social Welfare Portfolio)	
Orphans (individual)	449
Total	248,456

Source: ESDF, annual report, 2010.

Figure 5.1: Investment Portfolios according to Individuals in Beneficiary Families



As table 5.4 and figure 5.2 depict, the bulk of the investment portfolios were distributed to families that consist of 5 members and more; these amounted to 164,526

portfolios, equivalent to about 66.2% of the total. Since these are large families with low monthly incomes not exceeding LD 200, the living conditions of these families could be described as very difficult, and they are likely to be the ones most affected by the economic transformations taking place in the Libyan economy. Therefore, these portfolios would mitigate the negative impacts that may affect this category of society as a result of privatisation, the reduction of subsidies and the state's reduced role in the economy.

Cash distributions from the proceeds of investment portfolios until 31.8.2010 amounted to about LD 2,909,322. Table 5.5 shows the annual returns from the beginning of the Fund's activity until 31.8.2010.

Table 5.5: Distributed Returns (2007-2010)

Year	Distributed returns (millions LD)
2007	499,470
2008	702,509
2009	901,780
31.8.2010	805,563
Total	2,909,322

Source: ESDF, annual report, 2010.

Table 5.5 illustrates that the returns obtained by the beneficiaries of the portfolios have evolved significantly during the period from 2007 to 2010; the value of the revenue in 2007 was only LD 500 million but rose to more than LD 900 million in 2009, and then exceeded LD 800 million in only the first 8 months of 2010. The increase in returns could be attributable to the development in the number of investment portfolios in the same period. As shown in table 5.6, in 2007 the number of portfolios was 100,000, increasing in 2008 to 185,038 portfolios; in 2009 it exceeded 225,000 portfolios, and finally exceeded 248,000 portfolios on 31.8.2010.

Table 5.6: Evolution of Investment Portfolios Distributed (2007-2010)

Year	Portfolios Distributed
2007	100,000
2008	185,038
2009	225,817
31.8.2010	248,456

Source: ESDF, annual report, 2010.

As the discussion based on the available data shows the government paid great attention to low-income groups, improving their standard of living, providing them

with social welfare, and reducing disparities in income between segments of society in an attempt to mitigate the adverse impact of privatization as well as pursuing as a strategy to overcome poverty in the country. These portfolios are expected to boost the incomes of beneficiary families to about LD 5,000 dinars per year, whereas previously they did not exceed LD 2,000 annually on average (ESDF, 2009). Thus, this can be considered a direct compensation from the Libyan government for those groups that are expected to be more affected by price increases which may occur as a result of reduced subsidies, the reduced role of the state and the transition to a market economy.

However, there may be some criticisms of this policy of compensating the poorer segments of society. The main argument may centre on the sustainability of this solution, as the investment period of these portfolios is 5 years. Thus, at the end of this period, holders of investment portfolios would be able to sell shares included in their portfolios. Considering that these families are in need of short-term cash, and also considering their propensity to consume, it is inevitable that they would liquidate their investments. This could lead to a potential loss of continuing income for many of these families, particularly in terms of their future welfare; moreover, the prices of their shares might be low when they attempt to sell them, as a result of an expected excess supply at the end of the investment period. This actually happened in some countries such as the UK, for example; there, the government distributed discounted or free shares during the privatisation process for all citizens. Later, however, most of the new owners sold their shares at prices lower than the real prices in the stock market despite incentives provided by the British government to encourage new owners to retain ownership of their shares (Dahal, 1998; Graham, 2003). However, the case of Libya is slightly different as there are certain advantages; for example, the government prevented the disposition of investment portfolios for five years, with the possibility of renewing the investment period. Hence, this period may be sufficient to spread investment awareness among those who benefit from investment portfolios; furthermore, encouraging the renewal of the investment period may persuade citizens to maintain their investments.

Moreover, according to this programme, investment portfolios are granted to poor families whose monthly income does not exceed LD 200 while the latest study by the

General People's Committee for Planning, 2010, concluded that the poverty line in Libya is LD 520 (Huweij, 2011). Thus, it seems clear that this programme may improve the living conditions of the beneficiary families; however, the problem still exists for citizens who earn a monthly income exceeding LD 200 but not exceeding LD 500. Therefore, this segment of society has not benefited from this programme and is still suffering from being under the poverty line.

In summary, it can be argued that the Libyan state also focused on the social aspect of its economic liberalisation policy related to privatisation and economic reform through policies and measures for reducing the subsidies gradually in order to mitigate the expected adverse consequences of privatisation that could affect the segments of society that benefit from the subsidies. In addition, these measures also coincided with an increase in salaries, although the proportion of this increase was not significant, and the salaries are very low in general. Furthermore, the government established the Price Balancing Fund to follow up and monitor the prices of basic goods, intervening in cases of significant price increases to protect consumers. In addition, the allocation of funds for the poor and the establishment of an investment fund to invest these amounts can be considered as key measures taken by the state to fight poverty and to compensate those most affected by economic transformation in Libya. However, the government should take into account the living conditions of those not covered by this programme, whose monthly income is below the poverty line.

5.3.1.2 Consumer protection

The developments in the Libyan economy, such as privatisation of public sector institutions and changes in the local market structure, require the adoption of appropriate measures to protect consumers from many potential risks such as monopolies and price increases in the market.

For decades, public sector institutions have dominated most of the economic activities in Libya; as a result the government adopted a policy of price controls or compulsory pricing to control prices and protect consumers in the Libyan market (General People's Committee for Economy *et al.*, 2009). However, with the adoption of

policies of privatisation and greater reliance on the private sector, it became necessary to abolish those controls that had continued formally until 2007.

In this context, it should be noted that the Libyan government became aware of the importance of this issue since the beginning of the privatisation program in 2004, when it began to cooperate with and take expert advice from the International Monetary Fund (IMF) on many issues such as public finance management, private sector development, financial sector reform, and consumer protection. The abolition of the compulsory pricing policy was one of the most important recommendations by IMF experts, conceding the possibility of retaining this policy only for a limited number of goods and services that are not subject to sufficient competition; however, they stressed the need to develop a timetable for a gradual abolition of this policy (IMF, 2006a; 2006b).

Consequently, the Libyan government began to adopt measures for a gradual abolition of the compulsory pricing policy; as the General People's Committee for Economy (Ministry of Economy) issued its Resolution No. 246 of 2007 determining goods and services subject to the pricing policy, which are flour, rice, semolina, pasta, sugar, tea, vegetable oil, tomato paste, bread, medicines, milk and baby food, long-life milk, eggs and chicken, fodder, seeds, fertilizer, fuel and oil derivatives, medical services, transport services and communications, hotel accommodation, and some building materials such as steel and cement. Moreover, in 2009, the General People's Committee for Economy issued Resolution No. 85 for the year 2009 to add other goods to the pricing list: still water, soft drinks, canned fish, dried milk, juices and cheese.

In summary, the government pursued a policy of compulsory pricing to protect consumers from monopolistic practices that may occur in the market as a consequence of privatisation policies. However, this is contrary to the privatization policy, which aims to reduce the role of state in the economy and transforming the economy to a market economy. Therefore, by taking the necessary measures, the government aimed at phasing-out of the compulsory pricing system. However, these measures may be rather late, as the privatisation programme started in the early 1990s and resumed in 2004, while the government continued to control all prices until 2007 rather than

allowing them to be determined by market forces. Furthermore, although the General People's Committee for Economy (Ministry of Economy) took resolutions to reduce the number of goods and services included in the compulsory pricing system, these decisions retained a large number of goods and services in the policy, which confirms that there are many commercial and service areas suffering from the problem of lack of competition. This problem could be attributed to the weak private sector in Libya, which is a consequence of state dominance of economic activities over a long period, and may also be due to the failure of the state to create the appropriate environment to encourage and stimulate the private sector to participate in all economic activities.

Regarding the establishment of agencies for the protection of consumers, the General People's Committee issued Resolution No. 338 for the year 2004 on the establishment of the Libyan Association for Consumer Protection, which is an independent agency designed to defend consumers, prevent commercial fraud, and ensure technical and health specifications of goods and services. Furthermore, the General People's Committee urged the establishment of independent agencies for consumer protection in all *Shabiat*, granting them support and all the facilities required (General People's Committee for Economy *et al.*, 2009). Accordingly, People's Committees in *Shabiat* or the executive management in the governorates were assigned to the task of establishing independent agencies to ensure the effectiveness of the consumer protection programme through the presence of these agencies in all governorates (Economic File, 2009). However, as of 2010 this Resolution had not been applied, and consumer protection agencies have not been established, except for a single agency in the city of Misurata (General People's Committee of Economy, 2011).

With respect to the legal aspect of competition protection, the Libyan legislative authorities were slightly late in passing legislation on competition and preventing monopolistic practices; it was only in 2010 that the General People's Conference (the legislative authority in Libya) issued Law No. 23 on commercial activity, which covers all aspects of the practice of economic activities. In this law, articles 1282 - 1327 addressed the issues of competition and consumer protection (these articles are discussed in details in Chapter 7, in particular in section 7.3.1). These articles aim to determine provisions applicable to freedom of prices, reducing monopolies, regulation of commercial competition and determining the rules of protection in order to develop

economic activity and to ensure transparency and integrity in transactions. In addition, this law determines anti-competitive practices, approves the establishment of a competition council, determines the terms and tasks of this council, and provides penalties for unfair acts and anti-competitive practices (Law No 23, 2010). It can be indicated, therefore, that the issuance of competition law in Libya is a positive step for protecting consumers from monopolistic practices that may be exercised by the actors in the market, as well as being necessary to improve the competitive environment and encourage private investors. However, it seems that there were certain problems in bureaucratic circles in comprehending and also undertaking such structural changes. Therefore, a lack of enthusiasm was noticed in some actors in the former Libyan government when it came to implementing the changes and economic reforms. This law was issued in January 2010 and provided for the establishment of the Council of Competition, which can be considered a prerequisite for effectively enforcing the law. However, as of late 2012, the former regime but also the new government have not established this Council, and have not issued the relevant regulations intended to help implement the competition law and the related changes. In concluding, the difficulties regarding the issue of competition law could be described as delays in issuance of the law, and also delays in the establishment of the competition council and issuance of the regulations required to activate the law.

In summary, attempts to protect consumers from the potential negative impacts resulting from the transition to a market economy still remain weak, as problems and shortcomings continue in developing a structure for such an end. Importantly, the Libyan government is still imposing a compulsory pricing policy on many goods and services, despite attempts to reduce and limit price controls on these goods and services. Moreover, the Libyan government did not pay much attention to the establishment of independent agencies for consumer protection; despite issuing a resolution on the establishment of a central agency to protect consumers and encouraging the establishment of agencies in all governorates, at the end of 2010 there were no agencies except in one city. Furthermore, the delay in passing a law to protect competition and prevent monopolistic practices will hinder the liberalisation of prices as relevant authorities were compelled to try to protect consumers by adopting a

compulsory pricing policy, even though this policy is entirely incompatible with the programme of transformation to a market economy, adopted recently in Libya.

5.4 CONCLUSION

This chapter discussed the social consequences of privatisation and the solution developed by the government to tackle such consequences in Libya. The social issues include surplus labour resulting from the economic transition, be it through privatisation of some public sector companies, or through the reform and preparation of many public sectors for privatisation. The importance of this issue stems from the fact that the number of workers laid off from the public sector exceeded 400,000. In this regard, it seems clear that, although the government paid great attention to this issue by establishing institutions and specialised centres, and developing a plan including alternatives and solutions to address the problem of surplus labour, the treatment still suffers from many problems and shortcomings.

This chapter also discussed the issue of subsidies that burdened the state treasury for a long time. To manage this matter as a result of privatization, the government adopted many measures, such as the policy of gradual reduction of subsidies, increasing salaries, and support and compensation for poor segments of society. However, there are still some problems hampering the proper handling of this issue, such as poor salaries; furthermore, some segments of society who are already living below the poverty line are not covered by the social programme adopted by the government.

Lastly, consumer protection is an underdeveloped area. Although government attempted to create institutions for consumer protection in the face of privatization, the operationalization of these institutions has not begun yet.

CHAPTER 6

A CRITICAL ASSESSMENT OF THE ADEQUACY OF THE LIBYAN FINANCIAL AND ECONOMIC ENVIRONMENT FOR PRIVATISATION

6.1 INTRODUCTION

Creating a favourable economic environment for a market economy is the crucial requirement for the success of privatisation and economic transformation programmes, especially in transitional countries. In most of the transitional or former socialist countries, the economy had been restrained and planned by the state; therefore, privatisation in these countries means not only a change of ownership of public sector enterprises but also a reduction in the role of the state, with greater reliance on the private sector in economic life (Savas, 2001; Wiezsacker *et al.*, 2005). In addition, in such countries, privatisation implies the transfer of assets and economic decision-making processes from the state to the private sector (Rose, 2006). Therefore, creating the appropriate environment for the efficient operation of the private sector is a key factor in achieving the desired results of the transformation process. In other words, privatisation in transitional countries was part of an integrated reform programme; therefore, its success required measures that would help to create a suitable environment for the transformation process. Since Libya is one of the countries that had adopted socialist thought and a planned economy system, it was and still is essential to take appropriate measures to address the economic challenges and improve the financial and economic environment for the successful implementation of privatisation and the transition to a market economy (Ben Gedara, 2010; IMF, 2006 b). Thus, in order to create an environment encouraging the private investors, provide equal competitive opportunities, and achieve the desired results of privatisation and the transition to a market economy, the following measures are essential: market liberalisation, price deregulation, reform of the banking sector, establishment of an organised stock market, and stopping excessive subsidies provided by the state to public sector companies.

This chapter, thus, firstly discusses the importance of market liberalisation for the success of privatisation, as well as the nature of the Libyan market in the past decades.

It also assesses the monetary and commercial policies adopted by the government to liberalise the market and stimulate domestic and foreign competition to create an appropriate environment for privatisation. Secondly, it discusses the issue of subsidies provided by the state, and assesses the measures taken in this regard, including improving the public budget management, and the reform and privatisation of the banking sector. Finally, it also identifies the importance of the establishment of an organised stock market and assesses the appropriateness of the Libyan stock market for privatisation. All these policies are used as a benchmark against which the assessment of the adequacy of market conditions in Libya is made in the following sections.

6.2 MARKET LIBERALISATION

Adoption of market liberalisation policies is a prerequisite for the success of privatisation and the transition to a market economy, since these policies will encourage the private investors and stimulate competition in the market, thereby creating a favourable climate for the success of economic reform programmes (Beghetto, 2008; D'Souza *et al.*, 2005; World Bank, 1995). Many authors such as Desha (1991), Kikeri and Nellis (2002) and D'Souza *et al.* (2005) believe that these policies include all measures that liberalise the internal trade and stimulate local competition or so-called domestic product market competition, such as removing entry barriers, simplifying the registration process and the obtaining of business licenses, and deregulating prices. Moreover, market liberalisation policies include the liberalisation of foreign trade by removing restrictions on exports and imports, opening the market, encouraging foreign investments, and the unification of exchange rates to support the foreign competition or so-called international product market competition.

In this context, the World Bank (1995), Gwartney *et al.* (2001) and Kikeri and Nellis (2002) point out that stimulating domestic and foreign competition through market liberalisation has been the most important success factor in many cases of privatisation worldwide, especially in those countries which operated with planned economies. This confirms that privatisation, especially in transitional countries, is part of an integrated reform programme, and the policy of market liberalisation is an

essential part of this programme and a prerequisite for its success. It should be noted that Libya is also one of the countries that have adopted the policies of a planned economy, as a result of the adoption of the socialist system for decades; thus the privatisation of public sector institutions and the transition to a market economy requires serious reform for market liberalisation and the creation of an appropriate environment for the private sector investment in Libya.

6.2.1 The Nature of Market in Libya in the Pre-2002 Period

Since the 1970s, Libya adopted a planned-economy system, which limited investment to the extent determined by the state, and imposed strict restrictions on foreign trade. In addition, this era was characterised by the imposition on restrictions on prices, many forms of financial support and subsidies for SOE, and an almost complete absence of the role of the private sector (Ben Gedara, 2010; IMF, 2006b; General People's Committee for Economy *et al.*, 2009).

In such financial and economic environment, Libya's banking system has been dominated by five banks, which are owned in full or to a large extent by the state: Gumhouria Bank 100%, Umma Bank 100%, the National Commercial Bank 100%, Wahda Bank 87%, and Sahara Bank 82.7%. These banks constitute almost 90% of the assets of Libya's banking sector (Central Bank of Libya, 2010a; IMF, 2006b). State domination of the banking sector was the result of the issuance of the Nationalisation Act No. 153, which nationalised foreign stakes in commercial banks, as the vision of the state, in that period, was the implementation of economic and social plans requiring national banks to participate mainly in the development process rather than the pursuit of quick profit, speculation, and the transfer of money abroad. Accordingly, the banking sector came under direct control of the state, which was the main financier of the public sector and development projects (Central Bank of Libya, 2006; Shukri, 2007).

It should also be noted that the monetary and commercial policies adopted in that period helped to impose state control over all commercial activities; the main aims of those policies were the provision of goods for all citizens at the lowest cost possible, achieving a balance between the supply of and demand for these goods, and fighting bad practices in the market such as exploitation and monopoly. In addition, the

government was seeking, through these policies, to maintain a good standard of living for all citizens, especially those with limited incomes, by controlling prices in the market. Thus, achieving these goals, especially with the financial capacity available to the state resulting from oil revenues, and, indeed, the weakness of the private sector, was the main argument for the direct intervention in and dominance of the state in commercial activities in Libya (General Planning Council, 2000).

It goes without saying that the planned-economy nature of the country was mainly financed by the wealth generated by oil, which facilitated the process of economic development. However, after the sharp drop in oil prices at the end of the 1980s, multiple imbalances emerged such as the persistent deficit in achieving the desired balance between the demand for and availability of commodities to meet the needs of citizens, and the continuing rise in prices in the parallel market.

Efforts to address this situation, however, resulted in more direct and indirect state intervention through a variety of procedures and policies such as foreign exchange budgets, imposing import licenses, determining the amount and value of goods imported and produced locally, applying the quota system to distribute goods, continuing subsidies for commodities, determining certain channels to distribute these commodities, and applying a mandatory pricing system on most locally produced and imported goods (General Planning Council, 2000; General People's Committee for Economy *et al.*, 2009). Furthermore, the marketing system came to be based on a high degree of interference in the distribution of goods according to the indicator of per capita share of the most important locally produced and imported goods, and the population in the regions, to ensure that the necessary goods reached all citizens, especially low-income people (General Planning Council, 2000). The main justification for this approach was that there were insufficient goods to meet the full needs of the citizens, implying deficiencies in supply, especially under the exceptional circumstances dictated by the international sanctions imposed on Libya in the 1990s¹ (IMF, 2006a; 2006b; General Planning Council, 2000).

¹ UN sanctions came into effect in 1992, following the Lockerbie bombing in December 1988, prohibiting all international flights to Libya, stopping arms, aircraft and oil equipment sales (including spare parts) and freezing Libyan assets, except those necessary for oil transactions. However, as a result of Libya's cooperation in the resolution of the Lockerbie case, UN sanctions were suspended in 1999, and lifted in 2003 (The World Bank, 2006).

Although the circumstances and justifications might be seen as reasonable, this approach placed significant restrictions on the Libyan market without taking into account preferences of consumers, in addition to negative impacts, due to state intervention in the market, on the productive enterprises, such as low efficiency and productivity, lack of attention to quality and development of production or reduction of costs, and striving to raise prices as long as the marketing was guaranteed by controlling the supply (Shamia, 2007; Faresi and Shehoumi, 2006; Abdussalam, 2006; Ben Gedara, 2010; IMF, 2006b; General People's Committee for Economy *et al.*, 2009; General Planning Council, 2000).

Due to the dominance of the state commercial banks, and the states' interference in the policies and management of these banks, many problems appeared in the banking sector in Libya, perhaps the most important of which was the growing public sector debt, which adversely affected the financial capacity of the banking sector in Libya (Shukri, 2007).

As a result of the problems mentioned above, the Libyan government began, after the freezing of UN sanctions in 1999, to take into account the need to set policies and take appropriate measures to address the economic difficulties and challenges, encouraging the private investors and improving the business environment (Faitory, 2004; Makori, 2007; Shukri, 2007; IMF, 2006a; 2006b; General People's Committee for Economy *et al.*, 2009). Accordingly, in the year 2000, the General Planning Council prepared a proposal, including proposed economic policies for the next stage; this was approved by the General People's Congress (Legislator) and converted to the General People's Committee (Prime Ministry) to take the form of operating procedures in 2002, in order to address the key bottlenecks facing the national economy (General People's Committee for Economy *et al.*, 2009).

In addition, the government realised that the reform of the banking sector is a cornerstone of economic reform in order to provide funding for economic activities, giving a greater role to the private sector, shifting the burden from the state, and diversifying sources of income in the Libyan economy (Central Bank of Libya, 2010a; Shukri, 2007). Accordingly, in 2002 the Central Bank of Libya adopted a new monetary policy to liberalise and reform the banking sector. The objectives of this

policy were to create an effective banking system able to promote economic reforms, working efficiently, mobilising savings and investing them efficiently, maintaining depositors' money, achieving attractive returns for shareholders and investors, committing to international standards and applying the standards of governance, and capable of competing. This policy was a strategy consisting of three axes; the first aims to develop the banking sector, the second aims to encourage the entry of foreign banks, while the third seeks to develop the financial sector in general (Central Bank of Libya, 2010a).

This policy and the executive measures taken to achieve its goals are discussed and assessed later, particularly in the section that discusses the need to control excessive subsidies provided to public sector institutions, as reforming the banking sector and privatising public banks could be an effective solution to the problem. However, this section discusses and assesses the commercial policy, as well as actions taken by the monetary authority to liberalise the exchange rate and the abolition of restrictions on remittances, due to their direct relationship with commercial policy.

6.2.2 The New Commercial Policy, 2002

The plan adopted by the government, after the conditional lifting of the sanctions by the United Nations in 1999, stressed that the commercial policy, in general, should aim to bring the economy back to a 'normal' operating level. This means an economy that depends on market forces or the balance between supply and demand; taking the measures necessary to limit state intervention in economy in general and trade in particular to the minimum to maintain this balance; and aiming at protecting consumers from any rise in prices by adopting policies that expand choices and promote competition (General People's Committee for Economy *et al.*, 2009).

The General Planning Council (2000) stressed that this strategy is based on a set of general principles that must be taken into account, when taking measures and making arrangements to address the problems of the Libyan economy. These principles can be summarised as follows:

- (i) Giving the leading role in trade activity to the private sector, whether in terms of export, supply, distribution or transit, with the need to prevent monopolies and protect competition;
- (ii) Liberalising trade and reducing administrative restrictions to a minimum;
- (iii) Full coordination between the various policies adopted, especially the economic ones, to achieve the desired goals;
- (iv) Building and strengthening the confidence in the economic policies and means of implementation, and not taking any actions that might undermine this confidence.

Based on these principles recommended by the General Planning Council in 2000 on the proposed plan, the trade policy was approved in 2002, and its most important features and goals are described as follows²:

6.2.2.1 Implications for internal trade

The commercial policy aims to achieve advanced rates of openness with regard to the internal trade through the following (General Planning Council, 2000):

- (i) Opening the field of marketing and distribution entirely to the private sector, initiating its activity in this area, and amending existing legislation to achieve this purpose;
- (ii) Restructuring marketing and distribution activities into new legal forms according to the quality, size and importance of the activity; these should not be limited to the form of a joint-stock company, as this may not be suitable for all types and sizes of commercial activity;
- (iii) Cancellation of the licenses granted to public companies and institutions that engage in commercial activity, in order to leave the domain entirely to the private sector;
- (iv) Developing a policy for marketing and prices on the following basis:

² This section draws mainly on the report by General Planning Council (2000).

- a) prices should reflect the real value of goods through the calculation of their real costs, provided that the costs of imported goods (including customs duties) are at the upper end of the prices of similar domestic goods;
- b) reducing the mandatory pricing system to the minimum;
- c) reducing commodity subsidies gradually, as citizens' incomes improve;
- d) encouraging the creation of independent organisations specialising in protecting consumers from monopoly, exploitation, and poor application of the rules and laws of trade and marketing;
- e) re-studying and evaluating the legislation governing the activities of internal trade and administrative procedures for the purpose of reformulation, simplification and development, to make it consistent and compatible with the new economic targets and mechanisms;
- f) activating the law and regulations on weights and measures, and the law on fighting commercial fraud;
- g) paying more attention to quality control, especially for food commodities, whether locally produced or imported, and protecting consumers from the harmful effects.

These policies aimed at the efficient functioning of internal trade to prepare the ground for effective privatisation.

6.2.2.2 Implications for external trade:

The main features and objectives of the new commercial policy with regard to external trade are (General Planning Council, 2000):

- (i) Unification and liberalisation of exchange rate gradually, in line with the general economic objectives;
- (ii) Abolition of the policy of foreign exchange budgets, quantitative restrictions on imports, and import licenses;

- (iii) Allowing importing to proceed in more ways than just documentary credit, such as direct conversion and deferred payment documentary credit;
- (iv) Encouraging exports by adopting a policy of liberalising exports by legal channels, and establishing a body to entrench an export culture and the promotion of exports;
- (v) Stopping the creation of public institutions and companies for import and export in the future, giving the entire domain to the private sector, and considering the existing ones as temporary and targeted for removal from the activity;
- (vi) Developing transit trade, establishing free trade zones, and regulating their activities through the issuance of required laws and legislation;
- (vii) Developing legislation related to foreign trade in line with the new economic objectives.

It seems clear from the strategy adopted since 2002 that the Libyan government realised the importance of market liberalisation, and was giving broader space to the private sector to engage in trade; this had become necessary as part of the reforms to address the problems and bottlenecks experienced by the Libyan economy.

From the main features of the commercial policy mentioned above, it can be concluded that the Libyan government sought to activate the role of the private sector in the market through several measures such as eliminating or reducing the state's role in business in exports, imports, distribution, or pricing. In addition, it aimed to liberalise trade and reduce administrative restrictions to a minimum. In addition, the Libyan government stressed, through the commercial policy, the need to protect consumers by methods consistent with changes and new developments in the Libyan economy, such as issuing legislation to prevent monopolies, stimulating competition, and encouraging the establishment of independent bodies specialising in consumer protection.

After identifying the implications of privatisation for trade, the next section will discuss executive measures and actions taken in order to assess the commitment of the government and relevant authorities regarding the application of this strategy.

6.2.3 Measures Taken to Liberalise the Internal Trade

As mentioned earlier, the Libyan government realised that the process of promoting and stimulating the private sector to contribute to the economic development programmes could not succeed simply by allowing the private sector to set up some private projects in particular areas, or by transferring the ownership of some public companies to the private sector; rather, the nature of the Libyan economy, which was governed by the rules of the socialist system, required structural change in terms of its operation and functioning, particularly with regard to the pricing system, and legislation and regulations governing the process of establishing trade, production and service enterprises. This is in addition to taking appropriate measures to address the subsidies related policies, which was espoused to achieve social objectives, in accordance with the socialist perspective in Libya in the previous period (Paddy and Zwai, 2005; Shukri, 2007; Huweij 2011; General People's Committee for the Economy *et al.*, 2009; Central Bank of Libya, 2010a; IMF, 2006a; 2006b).

Accordingly, many measures have been taken to implement the policies that have been adopted since 2002, and they can be described as follows:

6.2.3.1 Mandatory pricing system

The Libyan government adopted the mandatory pricing policy from the 1970s under the pretext of protecting consumers from exploitation and monopolistic practices (General People's Committee for the Economy *et al.*, 2009). In this context, the legislative authorities issued a law to control prices, emphasising a set of principles and foundations in the field of commodity pricing that can be summarised as follows (General Planning Council, 2000):

- (i) All goods offered for sale must be subject to pricing; thus all marketing channels must abide by prices determined by competent government authorities;
- (ii) Goods can only be offered for sale through approved distribution channels;

- (iii) Prices are determined by calculating the cost elements and adding the established margins for each level of distribution (wholesale and retail), and for each commodity group. It should be noted here that the process of calculating the costs is based on data contained in the approved financial reports and official invoices that reflect the actual costs incurred by the institution in the production process, provided that the achieved production is not less than 80% of design capacity, increasing the pressure to improve the performance efficiency, and thereby reducing the costs for the produced unit to a minimum (General People's Committee for the Economy *et al.*, 2009). However, the General People's Committee issued a decision in 1985 to calculate fixed costs according to production levels of up to only 50% of design capacity (General People's Committee, Resolution No 27, 1985). Consequently, this decision led to an increase in the costs per produced unit, thereby raising prices because most of the domestic production did not reach targeted levels (General Planning Council, 2000).
- (iv) Authorities are responsible for determining prices depending on the nature of the goods; those commodities that are classified as very important for citizens and the economy should have prices that are standardised and determined by the General People's Committee, such as meat, poultry, eggs, dairy produce, and some building materials such as iron and cement. Meanwhile, other commodities are priced by local committees for pricing in all cities, including vegetables, production of local companies and cooperatives, as well as imports by companies working within the city.
- (v) Many entities such as law enforcement officers, municipal guards and police officers, are authorised to follow up and control price violations and punish violators. It should be mentioned that, due to the lack of independent organisations concerned with consumer protection, the General People's Committee for the Economy (Ministry of the Economy) was in charge of protecting consumers from high prices and commercial fraud, by ensuring the flow of goods according to actual costs. Moreover, the Ministry of Economy was also responsible for monitoring and follow-up and punishing violators (General People's Committee for the Economy *et al.*, 2009). In this context,

the General Planning Council (2000) indicates that, despite the Government's efforts to control prices and ensure consumer protection, the application has not been conducted in an effective manner, and the results did not reach the ambitiously determined.

It seems clear, therefore, that the pricing system applied in Libya was based on a high degree of direct intervention by the state in the process of pricing and production, according to the indicators and targets of the socialist system. Thus, the government realised that the transition to an economy that places greater reliance on the private sector requires a review of this approach. Accordingly, relevant authorities, such as the General People's Committee at its meeting on 31.3.2002, and the Planning Board in its proposal to amend the economic policies in 2000, stressed the need to reconsider the law of price controls, and the gradual abolition of the mandatory pricing system, because they are not consistent with the economic transformations (General People's Committee for the Economy *et al.*, 2009). In addition, many specialists such as Ben Gedara (2010), former Governor of Central Bank of Libya, General Planning Council (2000) and IMF (2006b) have suggested that the importance of the abolition of the mandatory pricing system and the price control law derives not only from their conflict with the transition to a market economy, and the negative role they may play in hindering the development of the private sector, but also from the negative consequences of this policy resulting from the lack of mechanisms and appropriate institutions for effective application.

These reasons caused the relevant Libyan authorities to conduct a set of procedures and measures to rectify the situation; the Libyan government resolutely began taking the necessary decisions for the phasing-out of the mandatory pricing system. In 2007, the General People's Committee for the Economy issued Resolution No 246 on the determination of certain goods to be subject to the mandatory pricing system. This resolution includes flour, rice, semolina, pasta, sugar, tea, vegetable oil, tomato paste, bread, medicines, milk and baby food, long-life milk, eggs and chicken, fodder, seeds, fertilizer, fuel and oil derivatives, medical services, transport services and communications, hotel accommodation, and some building materials such as steel and cement. The Ministry justified the need for this resolution to include many goods that are still subject to lack of competition; thereby, this decision may play a role in

protecting the consumers from the consequences of monopolistic practices (General People's Committee for the Economy *et al.*, 2009). However, this resolution can be considered the beginning of the government's arrangements for the abolition of the mandatory pricing system. Then, later in 2009, the General People's Committee for the Economy issued the Resolution No. 85 on the addition of other goods to the list of compulsory pricing. This additional list included still water, soft drinks, canned fish, dried milk, juices, and cheese, as the economy ministry discovered that these goods are also still suffering from a lack of competition.

Regarding the need to reconsider the law of price control, the General People's Committee for the Economy, in 2008, prepared a bill on competition and the prevention of monopoly, and another bill to protect the consumer, in order to ensure that consumers receive fair prices, high-quality goods and required services, under the circumstances and shifts in the structure of the local market (General People's Committee for the Economy *et al.*, 2009). Then, in 2010, the legislative authorities issued Law No 23 on commercial activity, which included a series of articles addressing the issue of competition and consumer protection. These articles aim to determine provisions applicable to freedom of prices, reducing monopolies, regulating commercial competition and determining the rules of protection in order to develop economic activity and to ensure transparency and integrity in transactions. In addition, this law determines anti-competitive practices, approves the establishment of a competition council, and determines terms and tasks of this council and penalties for unfair acts and anti-competitive practices (Law No 23, 2010).

In addition, many resolutions were taken concerning the establishment of independent bodies to protect the consumer in all *Shabiat*. However, as of 2010, these resolutions had not been applied, and consumer protection agencies had not been established, apart from a single agency in the city of Misurata (General People's Committee for the Economy, 2011). In fact, there has still not been any attempt to establish these agencies

Therefore, it seems clear that the Libyan government, until the recent political changes, had imposed the compulsory pricing policy on many goods and services despite attempts to reduce and limit these goods and services, which is completely

contrary to the policies adopted by the state toward a market economy that relies on market forces (supply and demand) in determining the prices of goods and services in the market. Moreover, the Libyan government did not pay the necessary attention to the issue of the establishment of independent agencies for consumer protection; despite the government encouraging the establishment of agencies in all governorates, as at the end of 2010 there were no agencies except in one city.

6.2.3.2 Facilitating and stimulating the contribution of the private sector

As mentioned earlier, the Libyan government realised the necessity of activating the contribution of the private sector to economic activity, due to its efficiency in performance and its ability to reduce costs and play a positive role in economic growth and development (Paddy and Zwai, 2005; General People's Committee for the Economy *et al.*, 2009; General Planning Council, 2000). Accordingly, the Libyan government undertook a range of administrative and legal measures to facilitate the entry of the private sector and the activation of its contribution to economic activity so that the desired economic diversification can be achieved.

Before examining the measures taken to facilitate the entry of the private sector, perhaps it would be useful to clarify developments that led to the marginalisation of the role played by this sector for decades. It should be noted that the private sector was more effective and active in the 1950s and 1960s, while the role of the state at the expense of the private sector was prioritised at the beginning of 1970s due to regime change towards socialist orientation, which led to more direct intervention by the state and greater reliance on public sector enterprises (IMF, 2006a; 2006b; Shukri, 2007).

By exploring the evolution of legislation relating to commercial activity in Libya, it is possible to find how and when the private sector was marginalised in the Libyan economy. As mentioned above, before the 1970s, the biggest role in economic life was played by the private sector, while the state's role was limited to issuing and developing regulations, and quality control. Additionally, administrative restrictions on business were very limited (General Planning Council, 2000). However, in the 1970s the direct role of the state started to increase in economic activity; public enterprises started to monopolise trade in many commodities such as petroleum products, subsidised food commodities, medicines, and cars. In addition to the

regulatory process, administrative restrictions began to widen. In 1971 legislative authorities issued Law No. 64, which gave the right to the Minister of Economy to issue any decision to prevent or impose an import licensing system for any commodity. Then, in 1975, Law No. 87 was issued to restrict the business of commercial agencies; accordingly, the state dominated commercial activities including imports, exports or distribution. This was followed in the 1980s with the issuing of Law No. 8 of 1984, which confirmed the monopoly of state enterprises in all commercial activities, as it banned all natural or legal persons from doing business or conducting brokerage, whether alone or with others (General Planning Council, 2000; Shukri, 2007).

In the late 1980s and early 1990s, the Libyan government began to change its policies towards a greater private sector participation in business; the General People's Committee issued Resolution No. 461 of 1987 to allow the private sector to practise some commercial activities. Then, the role of the private sector was confirmed in the field of retail distribution of goods, under Law No. 8 of 1988. Later, the role of the private sector was expanded by Law No. 9 of 1992, which opened the way for the private sector to engage in various business activities (Shernanna and Elfergani, 2007; General Planning Council, 2000).

The effectiveness of these laws, however, remained limited, as they did not greatly stimulate the private sector to participate effectively in business (Ben Gedara, 2010; General Planning Council, 2000; Shukri, 2007). This may be attributed to administrative constraints and complex procedures that may have deterred the entry of the private sector (General People's Committee for the Economy *et al.*, 2009). Furthermore, the General Planning Council (2000) indicated that there were some problems related to the legal form of the private companies, as the law specified that the private sector could engage in commercial activity only through the joint-stock companies, which may not be suitable for all types and sizes of commercial activity. Moreover, the instability of legislation and regulation of economic activity adversely affected the confidence of the private sector and, thus, its contribution to business (Ben Gedara, 2010). In addition, the continuity of the public sector monopoly in several areas in the market had a negative impact on the willingness and capacity of

the private sector to participate in economic life (IMF, 2006b; General Planning Council, 2000).

Therefore, the relevant authorities in Libya realised that many legal and administrative measures should be taken to stimulate and activate the role of the private sector in economic activity, especially in light of changes and new economic policies adopted since 2002. Accordingly, in 2004, Law No. 1 was issued on the amendment of Law No. 21 of 2001 concerning the practice of economic activities. This, in 2004, was followed by the Resolution of the General People's Committee No. 53 on the executive regulation of Laws 21 and 1, as mentioned above. Under these legislations the private sector was permitted to engage in commercial activity through the activity of individuals, families, cooperatives, and joint-stock companies, including holding companies, business incubators, and leasing companies. Furthermore, the General People's Committee reserved the right to allow any type of companies and other organisations to engage in economic activities. Moreover, in 2005, the General People's Committee issued Resolution No. 34 permitting limited liability companies to do business, whether in exports, imports or marketing. Therefore, it seems clear that the legislation passed after the adoption of new policies in 2002 gave more flexibility in choosing the right tool for a business, thereby overcoming the obstacles that were represented in limiting the private sector activity to the form of joint-stock companies. However, Issawi (2011), former Minister of the Economy, indicated that there are still many obstacles impeding the ability of the private sector to participate in economic activity, such as regulations that require LD100,000 as minimum capital for the establishment of a joint-stock company, while most of the world's countries, whether developed or developing, have cancelled this requirement (minimum capital) and opened the door for young people and new graduates to start their working lives and establish their companies according to their abilities and potential. He asserts that many foreign companies operating in Libya were founded with a much lower amount of capital than that required by the Libyan authorities; some companies were founded with a capital equivalent of just LD 3,000 and others with LD 15,000, working in large fields as oil and gas, and winning large contracts of up to one billion Libyan dinars. Thus, these conditions might negatively

affect the ability and the willingness of the private sector to contribute to economic activity.

With respect to facilitating and simplifying the administrative procedures for the registration and issuing of licenses of private companies, the General People's Committee issued Resolution No. 171 of 2006 on executive regulations of Law No. 21 of 2001, as amended by Law No. 1 of 2004, which identified the establishment procedures and the granting of licenses for tools of economic activities, and provided for the creation of a licensing office in the General People's Committee for the Economy, and several branches in major cities. Accordingly, 51 offices were established in major cities in different *Shabiat* in order to provide the service to citizens and facilitate the establishment of tools of economic activity on the one hand, and ensure compliance with regulations set by the legislation on the other (General People's Committee for the Economy *et al.*, 2009). In addition, the General People's Committee for the Economy established a specialist body called the '*Al Ghad* Centre' and a number of branches in *Shabiat* to further facilitate in founding productive and service companies. This Centre has been placed in charge of the process of establishing and registering companies, overseeing licensing offices, and helping the private sector to engage in economic activity by several methods such as providing consultations and feasibility studies (General People's Committee for the Economy *et al.*, 2009). In this context, the IMF (2006a) praised the efforts to simplify the procedures of the founding of business tools. The experts from the IMF (2006a) asserted that the government, through *Al Ghad* Centre, was facilitating the task of creating and establishing the tools of economic activity by applying the principle of the 'one-step window', as well as developing an appropriate mechanism with regard to the length of time, identified as thirty days at most, that aspiring business people have to wait for approval of their request to establish companies. In 2010, the General People's Committee for the Economy issued Resolution No. 644 on the issuance of business licenses. According to this decision, license applications should be submitted to one of licensing offices in the cities directly, after which the license will be issued within just 8 hours. Receipts of documents given to applicants upon application can be considered as licenses to practise the activity in the event of licenses not being issued, or failure to notify the applicant of a refusal, within the prescribed period.

As the resolution has thus far identified, the relevant authorities clearly made efforts to encourage and facilitate private sector participation in economic activity by the issuance of laws that allow private investors to engage in business through a variety of tools of economic activity. Moreover, the government established specialised bodies and issued several resolutions in order to facilitate the administrative process for the registration of companies and the issuing of business licenses to practise economic activities. However, some obstacles remain in regulations that impose certain irrational conditions such as the minimum amount of capital required to establish joint-stock companies, which may be an impediment to the willingness and ability of the private sector to engage in economic activity.

6.2.4 Measures taken to Liberalise External Trade

As mentioned previously, the strategy adopted by the Libyan government since 2002 stressed the need for liberalisation of foreign trade, in conjunction with structural reforms, in order to strengthen the role of the private sector and stimulate competition, improve the business environment, and address the long-standing dilemmas and bottlenecks created by the state control of economic activity (IMF, 2006b; General Planning Council, 2000). Accordingly, several measures and actions were taken by the Libyan government to liberalise foreign trade, whether related to exports, imports or exchange rate policy. All of these measures are discussed and assessed as follows:

6.2.4.1 Reform in export policies

The Libyan government issued many decisions relating to exports in order to encourage exports and stimulate the private sector to enter global markets. In 2006, the General People's Committee for the Economy issued Resolution No. 16 on the organisation of exports and imports, which allowed the export of all goods except for a few goods that are allowed to be exported only by certain institutions. It then issued the Resolution No. 404 of 2006, on the amendment of export controls, which cancelled export licenses. Then, in 2008, the range of goods banned for export was narrowed; the General People's Committee for the Economy issued Resolution No. 9 of 2008, which allowed the export of all goods and products without any quantitative or administrative restrictions except for some prohibited goods, which are subsidised goods, imported medicine and medical equipment, and some construction materials

such as cement and steel. Therefore, the government opened the way for exports without any restrictions except on some goods that may be needed in the local market.

Moreover, the government confirmed its desire to promote exports through the establishment of the Export Development Centre in 2006, for the development of export activity and the development of exports of domestic products. This Centre is expected to prepare studies, provide information, and propose the basis and methods necessary for the development of export activity, in addition to developing local production to be able to access and compete in global markets (General People's Committee, 2006, Resolution No. 128 on the establishment of the Export Development Centre).

It should also be noted that the government sought to promote exports through the participation of exporters in trade fairs; the General People's Committee issued Resolution 757 in 2007 on the adoption of an implementing regulation for the promotion and development of exports, which included the provision of incentives for local exporters to participate in international exhibitions including the organisation of trade missions, prompting the Export Development Centre to contribute to the cost of exhibits and exhibitors' tickets, or any other expenses. In addition, the General People's Committee issued Resolution No. 4 of 2009 on a regulation to support exports, which included, in addition to the support mentioned above, assistance and contribution in creating the necessary infrastructure for exports, through the Export Development Centre, such as establishing cold stores and units of packaging, and performing research and specialist studies to improve the quality of domestic products.

It seems, therefore, clear that the former Libyan government paid great attention to the issue of liberalisation and supporting export activity through the issuance of resolutions to allow the export of all goods and products without any quantitative or administrative restrictions, except for a very small number of products that are in demand in the domestic market. In addition, the government focused on the development of export activity through the establishment of a specialised body, and the issuance of several decisions that will encourage exporters and export development.

6.2.4.2 Reform in import policies

As regards the liberalisation of imports, the relevant authorities adopted several measures and issued many resolutions for the liberation of imports and creation of a competitive environment in the Libyan market. In 2004, the General People's Committee for the Economy issued Resolution No. 53 which provided for the abolishment of the policy of import budgets and any quantitative restrictions on imports, as well as narrowing the scope of goods prohibited for import to be limited to certain security goods, fuel, medicines, and some food items. Furthermore, the General People's Committee issued Resolution No. 171 of 2005, which prohibits trade activities of state bodies and institutions, or any institutions funded from the public treasury, either partially or completely.

Moreover, the relevant authorities issued several resolutions to organise and facilitate the payment process for imports. In 2006, the General People's Committee for the Economy issued Resolution No. 9, which stipulated that export and import activities should be in accordance with the methods of payment approved by the Central Bank of Libya. In addition, the General People's Committee issued Resolution No. 300 of 2006, which required suppliers to use methods of payment approved by the Central Bank of Libya, to ensure that there was no leakage of foreign currency outside of official channels, and to achieve the maximum benefit for the national economy. This decision also cancelled the system of valuation, which had been applied in the past, in order to simplify procedures, save time and effort, and to build trust between suppliers and the executive departments. In this context, the Central Bank of Libya issued the Resolution No. 31 of 2006 on the reduction of the minimum coverage required to open documentary credit, from 50% to 15% of the value of credits, in order to motivate investors and businessmen to engage in business. In addition, the Central Bank of Libya issued several resolutions and instructions to commercial banks as part of measures to facilitate the opening credits.

With respect to facilitating administrative procedures, the General People's Committee issued Resolution No. 334 of 2007 on the formation of a specialised committee for the development of international trade procedures. This Committee aims to supervise the establishment of a network of Libyan foreign trade, and work to

facilitate trade by establishing a system of standardised electronic networks to conduct all the procedures relating to exports, imports, and associated services. In addition, this committee is mandated to develop a system to facilitate imports, exports and transit trade, linking actors in the field of international electronic commerce (General People's Committee for the Economy *et al.*, 2009). In this context, the General People's Committee also issued Resolution No. 480 of 2009 on the authorisation in contracting to implement a network of Libyan international trade.

The previous Libyan government, thus, made significant efforts with regard to liberalisation of imports, including the abolition of quantitative restrictions on imports, and the abolition of the import budgets system, as well as narrowing the scope of the monopoly of imports, except for a limited number of goods for health and security reasons. Moreover, the government banned public institutions from practising trade with the objective of giving way to the private sector. Furthermore, many decisions and actions were taken by the government to facilitate and regulate administrative procedures relating to commercial activities. In addition, to facilitate the payment process, the Central Bank reduced the cash required to cover for documentary credits, which became only 15% of the value of credits.

6.2.4.3 Reform in Exchange rate policy

For decades, the exchange rate of the Libyan dinar was overvalued and constrained by the monetary authorities. In the period of 1973-1986, the Libyan dinar was linked to the U.S. dollar at a fixed exchange rate (\$1 = LD 0.29679). Accordingly, the value of the Libyan dinar against other currencies varied depending on changes in the dollar's value against those currencies (Central Bank of Libya, 2006). In March 1986, in order to introduce greater flexibility to the exchange rate, the monetary authorities pegged the Libyan dinar to special drawing rights SDR³, instead of the USD, at an exchange rate of LD 1 = 2.8 SDR, with a margin allowed to increase or decrease at the rate of exchange up to 7.5%. This margin has since been altered and increased several times. In the period 1999-2001, the Central Bank implemented a programme that allows the sale of foreign exchange through commercial banks and others, and according to the

³ The SDR is an international reserve asset, created by the IMF in 1969 to supplement the existing official reserves of member countries. SDRs are allocated to member countries in proportion to their IMF quotas. The SDR also serves as the unit of account of the IMF and some other international organisations. Its value is based on a basket of key international currencies (IMF, 2011).

price determined by the bank, called the exchange rate. This programme was aimed at the gradual elimination of the black market in foreign exchange, and the creation of a favourable climate for the exchange rate adjustment to bring it up to the real exchange value consistent with the conditions in the Libyan economy.

During the period 2002 - 2010, coinciding with the adoption of liberal policies to shift to a market economy, the Central Bank of Libya took several measures related to the monetary policy and to achieve its objectives such as stability in the general level of prices, and maintaining the integrity of the banking system (Central Bank of Libya, 2010a). Some of these measures were related to the exchange rate policy; on 24.12.2001, the Board of Directors of the Central Bank of Libya issued the Resolution No. 49 on the determination of the value of the Libyan dinar against foreign currencies. According to this Resolution, the exchange rate was set at 1 LD being equal to 0.608 of the SDR, or the equivalent of 1.300 LD per \$ 1, and this value was applied from 1.1.2002. Then, on 06/14/2003, the Board of Directors of the Central Bank of Libya issued the Resolution No. 17 on the amendment of the Libyan dinar exchange rate to make LD 1 equal to 0.5175 of the SDR. This is a fixed exchange rate against the unit of SDR, but variable against other foreign currencies according to the change of these currencies against the SDR.

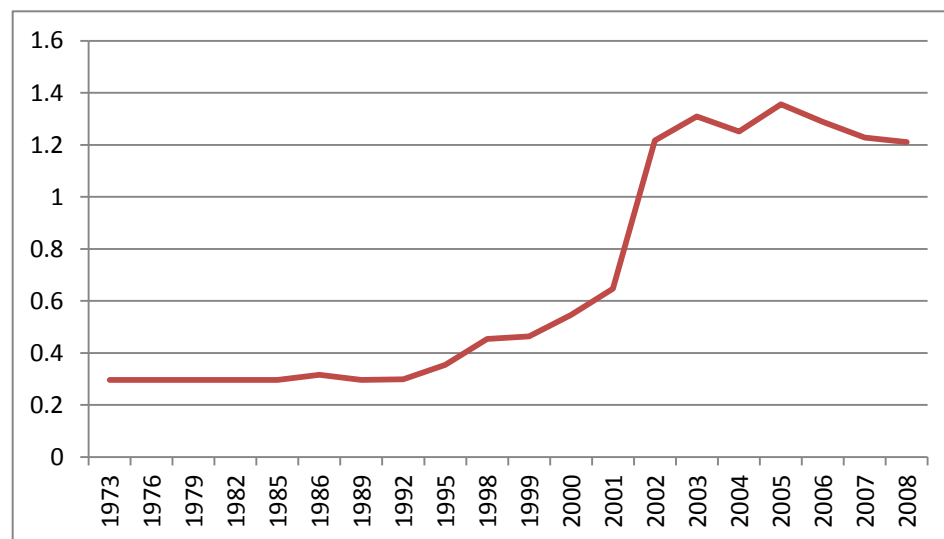
To put the developments in exchange rate policies in a perspective, Table 6.1 and Figure 6.1 shows the evolution of the value of the Libyan dinar against other currencies in the period 1973-2008.

Table 6.1: Rate of Libyan Dinars against Dollar (1973-2008)

End of	U.S Dollar	End of	U.S Dollar
1973	0.29679	1999	0.46308
1976	0.29679	2000	0.54613
1979	0.29679	2001	0.64732
1982	0.29679	2002	1.21669
1985	0.29679	2003	1.30839
1986	0.31575	2004	1.25064
1989	0.29679	2005	1.35540
1992	0.29921	2006	1.28821
1995	0.35445	2007	1.22728
1998	0.45380	2008	1.21110

Source: Central Bank of Libya, 2000; 2008.

Figure 6.1: Rate of Libyan Dinars against U.S Dollar (1973-2008)



As can be seen from table 6.1 and Figure 6.1, the Libyan dinar exchange rate, in the period 1973 - 1985, was fixed against the U.S. dollar, as it was pegged to the US\$ at a price of \$ 1 = LD 0.29679. In the period 1986-1998, the Libyan dinar exchange rate against the US\$ became variable because the monetary authorities linked the Libyan dinar with SDR. However, the value of the Libyan dinar in this period was overvalued, thereby creating a black market for foreign currency (Central Bank of Libya, 2006). Then, in 1999-2001, the exchange rate began to rise gradually as a result of the policy adopted by the Central Bank of Libya, which allowed commercial banks to sell foreign currency in accordance with the prices determined by the Central Bank. These prices increased gradually to create a climate for adjusting the dinar exchange rate in line with the conditions in the Libyan economy. Then finally, since 2002, the Libyan dinar exchange has settled at around 1.20, to 1.35 per US\$, as a result of pegging the Libyan dinar exchange rate with SDR at the price of LD 1 = 0.5175 SDR.

More than 8 years after the establishment of this new exchange rate, it seems that it has provided appropriate conditions for transition to market economy, as experts from the IMF confirmed in their reports on the exchange rate policy of the Libyan dinar (IMF, 2007; 2008; 2009).

Furthermore, the Central Bank of Libya took a range of measures on foreign remittances and exchange controls. From 1.1.2002, the Central Bank cancelled many

of the restrictions and controls on the exchanges related to foreign currency, on transactions of current accounts and for personal purposes, in conjunction with the abolition of import licenses and import budgets policy (Central Bank of Libya, 2010a).

In a joint report in 2009, the relevant authorities in Libya, namely the Ministry for the Economy, Ministry for Planning and Finance, and Central Bank of Libya, confirmed that the application of the new exchange policy and the abolition of exchange controls had achieved their objectives in terms of reducing prices and increasing stability, as well as eliminating a large part of the black-market trade. Furthermore, the implementation of this policy contributed to the identification of some industries that were not gaining any local comparative advantage, but were heavily dependent on hidden subsidies represented in the over-evaluation of the Libyan dinar.

In sum, it seems clear that the policy of unification of the exchange rate, and the pegging of the Libyan dinar to SDR, is still appropriate to the circumstances of the Libyan economy, according to recent reports by the IMF and the relevant authorities in Libya.

6.3 ENFORCEMENT OF HARD BUDGET CONSTRAINTS

For the transition economies, imposition of hard budget constraints has many advantages; as it plays a big role in providing equal opportunities to contribute to economic activity by removing excessive subsidies that are usually applied by governments to specific institutions or sectors at the expense of others. In addition, these restrictions help to reduce public budget deficits resulting from the subsidies policy, which was a major reason, in many countries, for the adoption of privatisation policies and the reduction of the role of the state in economic life (Kikeri *et al.*, 1997; Havrylyshyn and McGettigan, 1999; Parker and Kikpatrick, 2005; Nellis, 2007).

It should be noted that soft budgets, in many countries, were the main cause of the failure of public sector enterprises; the excessive subsidies provided by the state for these institutions usually had a negative impact on management efficiency, as well as on the efficiency of the allocation of economic resources, especially when these subsidies were provided to loss-making and non-viable enterprises. However,

subsidies normally provided to public sector companies might be direct subsidies for the budgets of these companies, or indirect subsidies in the form of priority access to finance or tax exemptions. Moreover, experience has shown that many countries continued to subsidise SOEs, even in the period of privatisation or transformation to the market economy; this may have adversely affected the willingness and ability of the private sector to contribute to economic activity. Additionally, the continuation of these subsidies created inefficiencies as well as waste and mismanagement. Furthermore, subsidies, especially those provided by public banks as facilities and loans on a non-commercial basis, may affect the ability of the banking sector to finance and develop the private sector (Kikeri and Nellis, 2002).

In this context, Pinto (1993) indicates that addressing this problem by developing a good policy for the general budget was one of the important reasons for the success of privatisation programmes and the achieving the desired positive results in many countries, such as Poland for example. Therefore, it seems clear that restrictions on the general budget, and controls on non-transparent transactions that may be conducted by the government, may play a positive role in the success of the privatisation process and private sector development.

Some previous studies (see, for example, Kikeri and Nellis, 2002) suggest that the privatisation of public banks might be one of the effective solutions to the problem of excessive subsidies and facilities. As it is argued that the transfer of ownership or management of these banks to the private sector would reduce the government's ability to put pressure on the banking sector, which could be an effective solution to the problem caused by the ability of some institutions to access finance at the expense of others. This solution has been applied already in many transitional countries such as Poland, Hungary and Estonia, where governments reformed and privatised the banking sector early in the process of transformation, leading to positive results after the privatisation of public companies. By contrast, in the former Soviet Union countries, the Czech Republic and Slovakia, the banking sector remained under state control, leading to the award of loans and credits to loss-making companies, even after privatisation; this has had many negative consequences such as the survival of these companies in the market despite their lack of efficiency, the depletion of state resources through loans granted by public banks, and the continuation of corrupt

practices by managers in these companies and the banking sector (Kikeri and Nellis, 2002).

Libya is no exception; the public sector, which had been operating in conditions that included the absence of competition and accountability, and weak management, did not achieve its desired goals, but instead it remained as a major cause of non-oil budget deficit in Libya for several years (Al Tarhuni, 2003; Fatory, 2004; Makori, 2007; Ben Gedara, 2010, General People's Committee for Economy *et al.*, 2009; Shukri, 2007; Shernanna and Elfergani, 2006; Tapoli, 2004).

In overall, hence, with structural reforms and privatisation of state-owned enterprises, the Libyan authorities demonstrated that they had realised the need to take further measures to encourage the private sector and ensure a successful transition to the market economy; these measures are explained below:

6.3.1 Executive Measures Taken by the Libyan Government

For the reasons explained above, the Libyan government began, in 2006, to develop a strategy to reform the economy and accelerate the transition to a market economy, in consultation with experts from the IMF. These consultations with experts concluded the need to implement a set of measures related to the general budget; the experts stressed that some basic steps should be followed to restore the confidence of the private sector and send signals to the market indicating the commitment of the Libyan authorities to economic reform. Control and management of the general budget was the first step recommended to the Libyan government. Moreover, it was suggested that reforming the banking sector could be considered a prerequisite for the success of the transition process (IMF, 2006a; 2006b). The following sections, hence, explores and discusses such measures.

6.3.1.1 Improving the management of the general budget

IMF experts suggested that correcting the budget structure should be one of the priorities for the competent authorities in Libya, since the budget in Libya is complex and not properly classified; as the general budget includes the operating budget, the budget of development and transformation, and the support budget. Moreover, many vague and opaque transactions are made outside the budget, and these should be

rapidly addressed (IMF, 2006b). Therefore, the most important recommendations by the IMF experts was that operating, transformation, and support budgets, as well as all processes that take place outside of the budget should be consolidated under a unified budget under the supervision and responsibility of the Finance Ministry (IMF, 2006b, 2007).

It should be noted here that the Libyan government first attempted to rationalise the public expenditure in 1995, with the establishment of the Oil Reserve Fund. This fund was intended to mitigate the impact of oil price fluctuations on government expenditures, and to protect the budget from the political pressure to increase spending and support or subsidise state institutions, especially when there was a surplus in revenue (Ben Gedara, 2010). However, the status of this fund was vague; as there was no clear legislation to clarify its purpose, operational objectives, its relationship to the general budget, or the authority responsible for monitoring it (IMF, 2006b). In fact, the Oil Reserve Fund was kept out of the budget as an off-budget item, and its operations are performed on the basis of the accumulation of resources. This is particularly important, as it is the only body that receives oil revenues when oil prices exceed a reference point provided by the budget law. In addition, government has full powers to make spending decisions from this fund, which implied increased spending outside the budget (IMF, 2006b), leading to unaccounted macroeconomic consequences. Furthermore, the experience of the Oil Reserves Fund was not consistent with its two main objectives: it was not included in the general budget and the lack of an authority charged with supervising its transactions may have caused increased opacity in government operations. Moreover, it did not impose any controls on government fiscal policy and thus did not help in achieving stability in public spending or offer any savings function (IMF, 2006b).

As a result, in 2005, the Libyan authorities decided to eliminate all forms of spending outside the budget funded from the Oil Reserve Fund. However, the situation has not been improved as the decisions have not been applied properly; as about a total of LD 3 billion is not accounted for in the budget, which has been allocated to public specialised banks from the resources of the Oil Reserve Fund to finance and provide subsidised loans to establish agricultural, service and industrial projects (IMF, 2006b).

It should be noted that the public specialised banks (real estate, agricultural, and industrial Development Bank) were established in the 1970s and 1980s in order to provide subsidised credit to finance development projects (Central Bank of Libya, 2000). However, the role of these banks, in recent years, has expanded significantly and they compete strongly in the Libyan banking market (Central Bank of Libya, 2010b; IMF, 2009). Available data confirm that these banks provided 65% of the total credit granted in 2007, as opposed to only 17% in 2001. Moreover, the competition between commercial banks and specialised banks is unequal and unfair because there are no funding costs for the specialised banks; moreover, they offer low interest rates and do not have to apply standards in granting credit (IMF, 2009).

Furthermore, the government established a new fund operating outside the general budget, called the Investment Fund. Targets and mechanisms for the use of financial resources from this fund have not been clearly identified; hence, it earmarked income, which increases the complexity of the financial policy and the task of controlling public expenditure. Consequently, the situation has become very complex due to the presence of three budgets (operating, development and transformation, and support), administered by three ministries (finance, planning and economics, respectively), as well as a large number of transactions taking place outside the budget (IMF, 2006b). All of this makes the processes of monitoring and reviewing budget transactions very difficult. For these reasons, IMF experts, in their consultations with the relevant authorities of Libya, stressed the need to consolidate the general budget and improve the transparency of government operations through the cancellation of spending outside the budget in order to create stability in the economy and improve the business environment, as well as restoring the confidence of the private sector and sending signals to the market, indicating the government's commitment to economic reform.

Accordingly, further measures were taken by the Libyan government to correct the situation. In 2007, there were improvements to the issue of budget preparation, and operating and support budgets, as a result, were consolidated. However, operations of various government funds are still held and recorded outside the general budget (Ben Gedara, 2010). In 2006, for example, US\$ 11 billion were allocated to the Investment Fund, the Libyan African Fund, and the Social and Economic Development Fund; this

resulted in the founding of several companies working in different areas, as well as the purchasing of shares in large public companies during privatisation (Social and Economic Development Fund, 2009; Privatisation Agency, 2010). Then, in 2009, the General People's Committee for Finance and the General People's Committee for Planning were merged, and experts from the IMF considered this an important step in the right direction in order to govern and control the state budget (IMF, 2009). They believe that this measure would limit the need to implement investment programmes through funds operating outside the public budget, away from the monitoring and control of the Ministry for Planning and Finance. They also point out that these funds may be susceptible to government pressure and manipulation, causing a deviation from the desired course and goals. Lastly, these funds may lead to increased complexity in the management of public spending, price distortions caused by state intervention and subsidies, and the crowding out of the private sector (IMF, 2009).

6.3.1.2 Banking sector reform

Since 1970, Libya's banking system has been dominated by five banks, which are owned in full or in the main by the state, which are: Gumhouria Bank 100%, Umma Bank 100%, the National Commercial Bank 100%, Wahda Bank 87%, and Sahara Bank 82.7%. These banks constitute almost 90% of the assets of Libya's banking sector (Central Bank of Libya, 2010a; IMF, 2006b).

Due to the adoption of development plans and the heavy reliance on public sector enterprises in the implementation of these plans and the instructions of the responsible authorities, public commercial banks became the main financiers of these projects and institutions. The banking sector's financing of public sector companies, at that time, did not proceed on a commercial basis or with any economic feasibility; rather, those public enterprises and projects have been financed on a social basis. Moreover, public institutions were characterised by poor performance and inability to service their obligations, which led to the emergence of the problem of public sector debt (Shukri, 2007). Public commercial banks were no exception; as they also suffered from mismanagement and corruption, in addition to the large number of administrative restrictions (Ben Gedara, 2010; Shukri, 2007).

Therefore, in light of changes and new developments, and the transition to a market economy, it was necessary to take appropriate measures to reform the banking sector to bring it into line with the new policies in order to offset the burden on the state, as well as to enable this sector to contribute effectively to the encouragement of the private sector and the creation of a better environment for its development (Central Bank of Libya, 2010a). Accordingly, the Central Bank of Libya implemented a range of measures during the period 2002-2010, such as restructuring commercial banks, and beginning to transfer the ownership of public banks to the private sector. Moreover, in 2005 the legislature passed a new law on banks which greatly helped in the adoption of the arrangements and measures for banking sector reform (Central Bank of Libya, 2010a; IMF, 2006b).

These measures are supposed to play a major role in increasing the efficiency and performance of commercial banks, as well as the development of the private sector. Moreover, these reforms in the banking sector was expected to reduce the pressures faced by the banking sector to provide subsidies and facilities to loss-making companies operating in the Libyan economy, be they public companies or joint ventures between public and private sectors. It has been agreed, as mentioned earlier, that these excessive subsidies provided by public banks, mostly in the form of loans and facilities offered on a non-commercial basis, may be one of the important reasons for the poor performance of company management and may also play a negative role in achieving the goals of reform after the privatisation of state-owned companies. Therefore, the restructuring and privatisation of public banks is an effective solution to eliminate subsidies to public companies or newly privatised companies, thereby avoiding the negative consequences that have occurred in many previous experiences of privatisation, such as in the former Soviet Union countries, the Czech Republic and Slovakia (Kikeri and Nellis, 2002).

The measures and arrangements implemented by the Libyan government for this end discussed and assessed in the following sections:

6.3.1.2.1 Restructuring of commercial banks

With regard to the restructuring of commercial banks, the following measures have been taken (Central Bank of Libya, 2010a; 2006):

In 2005, the legislative authorities issued Law No. 1, which states the need for separation between the board of directors of the bank and the functions of the general director, and determines the number of board members; the board must comprise at least 5 and no more than 7 members. In this context, many of the decisions by the Central Bank for the restructuring of commercial banks have been taken in accordance with the provisions of this Law.

In 2006, the Central Bank of Libya issued the Resolution No. 57 on the delegation of boards of directors in commercial banks to make decisions relating to the closure of bank branches or their integration into other branches, or their conversion to banking agencies, while keeping the issue of opening branches or new banking agencies conditional on the approval of the board of directors of the Central Bank of Libya.

In implementing the new law, the Central Bank issued direct instructions to the boards of directors of commercial banks to establish internal auditing departments. The Law provides for the selection of two external auditors, among the records prepared by the Central Bank of Libya, to prepare two separate reports on the accounts and financial statements according to the accounting and auditing international standards. The commercial banks had already begun to apply this requirement on the financial statements of banks in 2005. It should be noted that the financial statements of commercial banks were audited by a government department called the Financial Audit Department, and there was always a delay of up to several years in the review and adoption of budgets, which affected the transparency, disclosure and integrity of financial transactions in these banks.

Many of the measures taken by the Central Bank were intended to increase the capital of commercial banks; in 2007, the capital of Wahda Bank increased to 108 million dinars from only 36 million dinars. Moreover, in 2007, the capital of Sahara Bank increased from 126 million dinars to 252 million dinars. In 2008, the Umma Bank and Gumhouria Bank were merged into one bank called Gumhouria Bank; the new bank's capital increased to one billion dinars, whereas the total capital of both banks had previously been only 200 million dinars. Then, in 2009, the National Commercial Bank's capital was increased from 100 to 500 million dinars. These increases would

raise the ability of banks to grant credit, especially after the Resolution No. 48 of 2006 on raising the credit limit for commercial banks from 5% to 20% of the total capital.

6.3.1.2.2 Privatisation of public banks

After actions taken by the Libyan government on the restructuring of public commercial banks, it started to transfer of the ownership of these banks from state to private ownership. Procedures taken in this regard can be presented as follows (Shukri, 2007; Central Bank of Libya, 2010a; IMF, 2008):

- (i) In August 2007, the Libyan government took the first steps in the privatisation of public commercial banks: the state sold 19% of the ownership of Sahara Bank to BNP Paribas, giving full management rights to the foreign bank and the possibility of buying additional shares up to 51% within 5 years.
- (ii) In 2008, under the same conditions applied to the process of privatisation of Sahara Bank, the government privatised the Wahda Bank, selling it to the Arab Bank.
- (iii) Then, at the beginning of 2010, about 15% of the Central Bank of Libya's ownership of both the Gumhouria Bank and the National Commercial Bank was offered for public subscription on the Libyan stock market.

6.3.1.2.3 Establishment of new private commercial banks

In addition to the Commerce and Development Bank, which was established in 1996, nine private commercial banks were established in the period 2001- 2010, namely:

- (i) Aman Bank for Commerce and Investment;
- (ii) Alejma'a Alarabi Bank;
- (iii) Al Wafa Bank;
- (iv) Al Waha Bank;
- (v) Bank of North Africa;
- (vi) Mediterranean Bank;

- (vii) Assaray Bank;
- (viii) United Bank;
- (ix) Arab Commercial Bank.

Thus, the expansion in the number of commercial banks is expected to provide a more dynamic competitive environment and better selection and decision-making in the process of fund allocation.

6.3.1.2.4 The entry of foreign banks

The Board of Directors of the Central Bank of Libya issued the Resolution No. 56 in 2006 on the adoption of a strategy to allow foreign banks to enter the Libyan banking market. According to this strategy, many decisions were taken, and several developments took place in the structure of the Libyan banking sector, which can be presented as follows (Central Bank of Libya, 2010 a):

- (i) In 2007, Bank of BNP Paribas entered the Libyan banking market as a strategic partner in the Sahara Bank;
- (ii) In 2008, the Arab Bank entered as a strategic partner in the Al Wahda Bank;
- (iii) In 2008, the Board of Directors of the Central Bank of Libya issued the Resolution No. 1 in 2008 on the adoption of the memorandum the Libyan Qatari Bank, and the Libyan First Gulf Bank, which began operations in late 2008;
- (iv) The Board of Directors of the Central Bank of Libya issued several decisions approving the opening of representative offices of foreign banks; accordingly, the number of representative offices operating in Libya in 2010 reached 21;
- (v) Recently, in December 2010, Central Bank of Libya agreed to allow the Qatar National Bank to become a strategic partner in the Trade and Development Bank.

6.3.1.2.5 Stimulating competition in the Libyan banking market

As mentioned above, the legislative authorities and the Central Bank of Libya undertook a series of measures relating to the restructuring of commercial banks, privatisation of public commercial banks, establishment of new private banks, and

allowing foreign banks to enter the Libyan banking market. All these measures are expected to play an important role in stimulating competition among commercial banks, thereby increasing the efficiency of the banking sector in Libya.

In addition, many other measures were taken to render more freedom and independence to commercial banks to motivate competition. These procedures include the liberalisation of interest rates on both deposits and loans, deregulation of commissions charged by commercial banks, and strengthening the independence of banks in making credit decisions, which are discussed below:

(i) Unification and deregulation of lending interest rates

In 2005, the Board of Directors of the Central Bank of Libya issued the decision No. 39 on the unification of the interest rate on all loans and facilities granted by commercial banks, to become equal to the rediscount rate at the Central Bank of Libya, plus a percentage or margin of not more than 2.5%. Then, in 2007, the Board of Directors of the Central Bank of Libya issued Resolution No. 26 on the liberalisation of interest rates on loans; the determining of these rates became the prerogative of boards of directors of commercial banks, without intervention by the Central Bank of Libya.

(ii) Deregulation of deposit interest rates

The Board of Directors of the Central Bank of Libya issued Resolution No. 36 of 2005 on the deregulation of deposit interest rates, leaving the negotiations to the commercial bank and its client, thereby giving commercial banks more flexibility and freedom to compete in attracting deposits and investments.

(iii) Deregulation of commission charged by banks

In 2005, the Central Bank of Libya issued Resolution No. 3, which provides for the deregulation of commissions charged by commercial banks for the services provided to their customers; these commissions are no longer defined or restricted by the Central Bank, thereby leaving room for competition among commercial banks in regard to commissions charged for financial services.

(iv) Strengthening the independence of the banks in their decision making

The new banking law, which was passed in 2005, strengthened the independence of commercial banks in making decisions regarding the granting of loans and facilities, and the use of money policy. This law gave the departments of commercial banks the right to make independent credit decisions based on feasibility studies and the reputation of customers, provided that the banks committed themselves to developing written and clear credit policies. This is expected to prevent political and social interference in credit allocations.

Later, the Board of Directors of the Central Bank of Libya issued a series of resolutions which gave more flexibility to commercial banks with regard to the policy on credit; for example, Resolution No. 48 of 2006 raised the credit limit for commercial banks from 5% to 20% of the total capital, thereby increasing the banks' ability to grant credit, especially after the increases in the capital of commercial banks.

Moreover, the Board of Directors of the Central Bank of Libya issued Resolution No. 3 in 2006, which allowed commercial banks to grant loans and commercial facilities to foreign companies operating in Libya, not exceeding 50% of the total cost of the financed project, provided that the maximum credit granted by each commercial bank for this purpose does not exceed 30% of the total credit granted.

Furthermore, a set of regulatory decisions were issued by the Board of Directors of the Central Bank of Libya, such as Resolution No. 45 of 2008 on the organisation of the credit policy of commercial banks, which stresses that the credit portfolio of any commercial bank must not exceed 70% of the total of custodial liabilities of the bank, and that the structure of the credit portfolio must be as follows: overdraft 15%, commercial loans 15%, real estate investments 15%, social advances 20%, documentary credits 20%, and guarantees 15%. Later, in the same context, the governor of the Central Bank of Libya issued the Resolution No. 3 in 2010, which gave more flexibility to commercial banks with respect to the credit portfolio, allowing the commercial banks to grant credit of up to 30% of the total credit portfolio, for any of the portfolio categories.

The report of the Central Bank of Libya for the year 2010 noted that these policies have had a significant impact on the loan portfolios of commercial banks, especially after the processing and settlement of public treasury debt for these banks.

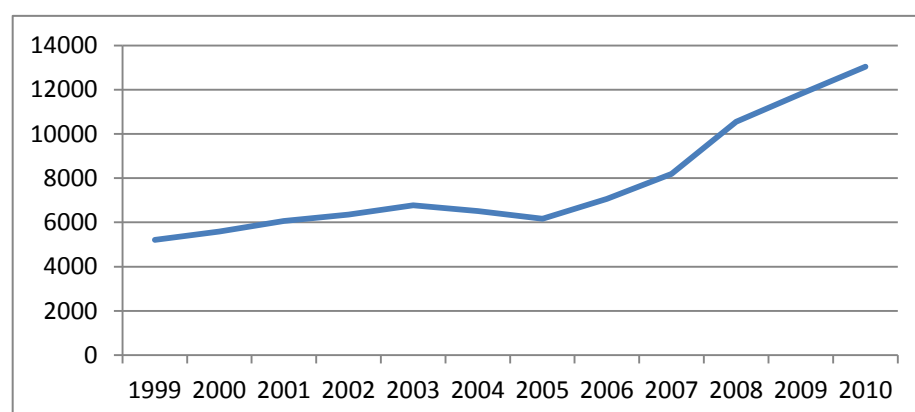
Table 6.2 and Figure 6.2 provide further details on credits provided by commercial banks in the period 1999 –2010.

Table 6.2: Evolution of Credits Provided by Libyan Commercial Banks (Million LD)

YEAR	CREDIT	% GROWTH	YEAR	CREDIT	% GROWTH
1999	5203.6	--	2005	6166.6	(5.3)
2000	5584.0	7.3	2006	7067.2	14.6
2001	6057.6	8.5	2007	8191.3	15.9
2002	6357.8	5	2008	10544.9	28.7
2003	6775.1	6.6	2009	11812.7	12
2004	6510.3	(3.9)	2010	13044.6	10.4

Source: Central Bank of Libya, Annual Reports, 2008; 2010b.

Figure 6.2: Evolution of Credits Provided by Libyan Commercial Banks



As can be seen from Table 6.2 and Figure 6.2, it is clear that, as a result of the decisions of the Central Bank of Libya, which gave more flexibility to commercial banks on credit policy, there has been an increasing trend in the volume of credit, especially in the last five years; the value of credits increased from LD 6.16 billion in 2005 to about LD 12.5 billion at the end of the first quarter of 2010. However, the Central Bank of Libya in a recent report in 2010 indicated that the growth rate of credits of commercial banks is weak compared with the growth rate of deposits during the same period: as the proportion of total credit to total deposits was only 23.6% in 2010, while it was about 60% in 2004. The Central Bank of Libya (2010b) and the IMF (2009) illustrated that this is due to the decline in aggregate demand for

commercial bank loans against loans granted by banks specialising in this field. Available data show that the share of these specialised banks in credits increased to around 65% in 2007 from only 17% in 2001. The IMF (2009) emphasises that this competition between commercial banks and specialised banks is unfair because the specialised banks have no funding costs and low interest rates; moreover, they do not have to apply standards for granting credit. Furthermore, the Central Bank of Libya (2010b) indicates that, as a result of the problem of uncertainty and the high degree of risk in the Libyan banking market, commercial banks prefer to use their funds as deposits at the Central Bank instead of granting loans and financial facilities. Available data confirm this assumption, as the commercial banks' deposits at the Central Bank increased by 374% during the period 2004 to 2010 (Central Bank of Libya, 2010b).

Giving commercial banks the right to take credit decisions without outside interference is considered to be a strong incentive for banks' directors to take administrative and regulatory measures to improve the credit portfolio, either concerning past loans or the granting of new loans in the future.

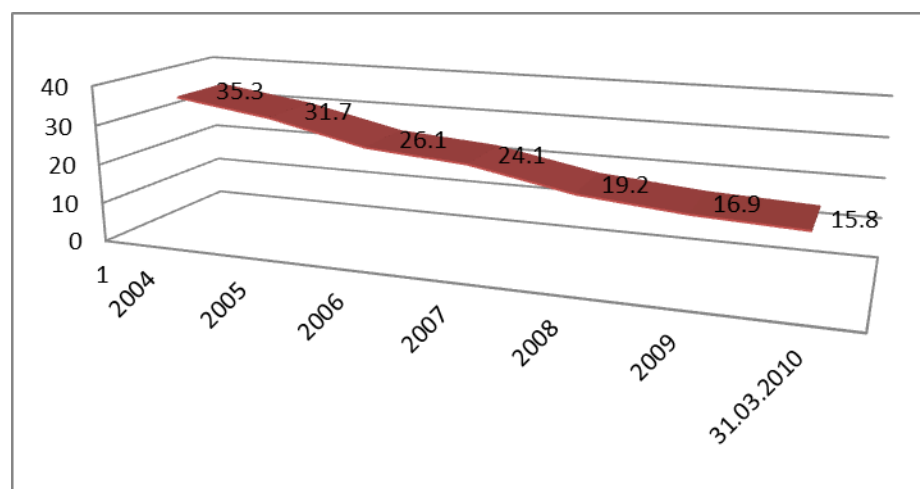
Table 6.3 and Figure 6.3 show the improvement of credit management in commercial banks; the proportion of non-performing debts to total debts decreased considerably from 35.5% in 2004 to 15.8 in the first quarter of 2010.

Table 6.3: The Proportion of Non-Performing Loans to total Debts in Libyan Commercial Banks (2004-2010)

YEAR	NON-PERFORMING LOANS LD Million	TOTAL DEBT LD Million	NON PERFORMING LOANS / TOTAL DEBT
2004	2300	6510.3	35.3 %
2005	1955	6166.6	31.7%
2006	1845.9	7067.2	26.1%
2007	1970.2	8191.3	24.1%
2008	2023	10544.9	19.2%
2009	1991.3	11812.7	16.9%
31.03.2010	1991.3	12577.0	15.8%

Source: Central Bank of Libya, annual report, 2010b.

Figure 6.3: The Proportion of Non-Performing Loans to total Debts in Libyan Commercial Banks (2004-2010) (%)



In summary, the monetary authorities in Libya took a series of measures to reform the banking sector, which should help the process of economic transformation to succeed. Measures such as the restructuring of commercial banks and the privatisation of public banks could be effective solutions to the problem of excessive subsidies provided to public sector or newly privatised enterprises. Moreover, measures were taken to allow the establishment of new private banks, as well as permitting foreign investors and foreign banks to participate in the Libyan banking market; which may play a significant role in stimulate competition, thereby improving the efficiency of the banking sector in Libya. In addition, arrangements and measures taken by relevant authorities to render independence and more flexibility to commercial banks in making credit decisions, and deregulation of interest rates and banking services commissions, may positively affect the competition between commercial banks as well as contributing to encouraging the private sector to play a greater role in economic activity. However, the role given by the Libyan government to specialised public banks such as the Industrial Development Bank, Agricultural Bank, and Savings and Real-Estate Investment Bank, which are not under the direct supervision of the Central Bank of Libya, may adversely affect the policies adopted to reform the banking sector. In other words, the continuing practice of these banks in granting loans and financial facilities, in certain areas, may reduce the effectiveness of efforts by the monetary authorities with respect to the privatisation and restructuring of commercial banks; it may also damage the liberal policies that seek to increase the

efficiency of commercial banks and improve the environment for competition in the banking sector, as the available data, as mentioned earlier, indicate that large amounts of up to LD 3 billion were allocated to these banks in recent years for the purpose of granting loans to set up agricultural, industrial, and real estate projects.

In regard to controlling and improving the management of the public budget, it is clear that the competent authorities in Libya took some concrete steps towards the unification of the general budget by integrating the operating budget with the support budget in order to facilitate the surveillance process and improve transparency in public finance transactions. However, the establishment of investment funds operating outside the general budget highlights certain fears and suspicions, as these funds may be subject to pressure by the government, causing it to deviate from its course and goals. In addition, these funds may create price distortions resulting from subsidies for their activities. Furthermore, these funds may cause the crowding out of the private sector in the economy and constitute a conflict with the objectives of the reform strategy and policy adopted by the Libyan government, which seeks to encourage the private sector to contribute more effectively in economic activity.

Furthermore, the specialised public banks may be exposed to government pressure to provide non-commercial loans or subsidies for certain companies, or certain sectors of the economy, thereby adversely affecting the competition in the banking market, as well as the performance and efficiency of companies operating in the economy. This means that results may be inconsistent with the objective of the policies of privatisation and economic reform.

6.4 ORGANISED STOCK MARKET

A successful stock market is one of the main conditions for the successful implementation of privatisation and private sector development, as privatisation aims also contribute to financial sector development on the one hand, and the shares of the newly privatised companies need stock market for trading. It is also important, as offering shares in the stock market is one of the most common and successful methods of privatisation (Megginson and Netter, 2003; Lieberman and Fergusson, 1998; Mokhtar, 2009; Dahal, 1998). Furthermore, the importance of the stock market in the process of privatisation and the transition to a market economy is derived from

it being an effective tool to control and monitor managers, urging them to improve their performance and thereby increasing the efficiency of the privatised enterprises, which is one of the most important objectives of privatisation and economic reform programmes (Levin, 2004). Moreover, an active stock market plays a determining role in savings allocation, attracting local and foreign investors, and private sector development by providing investment information and risk diversification and reducing liquidity risk. These functions encourage the private sector to contribute to economic activity and provide the necessary funding, as well as stimulating competition in the market (McLindon, 1996; Levin, 2004).

Some may argue (such as Claessens *et al.*, 2000) that in many countries, especially in transitional countries, stock markets, if there are any, are not expected to play a significant role in a privatisation process and transition to the market economy, as they are often underdeveloped or weak. Many studies, however, prove that the continuity of the privatisation process would be an important source of stock market development, albeit a rudimentary one (see, for example, Megginson and Bouchkova, 2000; Boubakri and Hamza, 2007; Bortolotti *et al.*, 2006; Perotti and Oijen 2001; Tanko, 2004). It seems clear, therefore, that there is a causal relationship between stock markets and privatisation programmes as privatisation is supposed to help in the development of liquidity and activity of stock markets. Stock markets, on the other hand, would play a facilitatory role in the privatisation of SOEs, as well as indirectly playing an important regulatory and supervisory role after privatisation, to achieve the desired goals. McLindon (1996) and Lieberman and Fergusson (1998), however, believe that several conditions must be put in place to strengthen the stock market and increase its ability to carry out its vital role in accelerating privatisation and the development of the private sector. The most important of these conditions are the provision of a legal and regulatory framework, and the development of an adequate trading infrastructure.

It seems clear, therefore, that the availability of the stock market and the conditions required for its success and development are key requirements for the success of privatisation and the transition to a market economy

6.4.1 The Need for the Stock Market in Libya

The structural changes in the recent years of pre-revolution era in the Libyan economy, achieved by passing encouraging legislation and targeting a large number of SOEs for privatisation, with the objective of providing an opportunity for the private sector to play a key role in the economy require attention to be paid to the supporting institutions at this stage, such as the stock market (Paddy and Zwai, 2005; Tapoli, 1997; Qomati, 1997; General People's Committee for the Economy *et al.*, 2009).

The importance of stock markets and the role they can play in the economy have been discussed in detail in Chapter 3, both in terms of mobilisation of domestic savings, increasing the capacity of individuals to invest, the role of corporate governance and the pressure on the management of private companies to improve performance, and the role that might be played by stock markets in stimulating and accelerating the privatisation programme. Therefore, in this section, the focus will be on the need to stimulate the stock market and ensure the success of the privatisation of SOEs in Libya.

The privatisation experience in Libya, whether in the first round, which began in the late 1980s, or recent privatisation which began in 2004, has faced many problems due to the absence of many elements fundamental to effective implementation, such as a stock market, a vibrant private sector, and an efficient data and information collection and dissemination system needed by private investors (Hamdo, 2004; Paddy and Zwai, 2005).

In the first privatisation programme, which began in 1987, most of the privatised enterprises faced many financial and technical problems, leading to most of them halting production (Shernanna and Elfergani, 2006; Paddy and Zwai, 2005; Abdussalam, 2006). It should be noted that the method adopted for privatisation, in that period, was the privatisation of management and employees because of the weakness of the private sector and the lack of supporting institutions such as the stock market. Therefore, restricting the privatisation to a mere change of ownership, as a method, could be considered as the main reason for the failure of privatisation to achieve an improvement in the efficiency of the privatised companies in that

particular period. This is because; employees in the public sector do not usually have the financial ability, especially in large companies, to provide the requirements to develop enterprises in terms of modern technology and managerial and marketing skills (Dahal, 1998). Moreover, Abdussalam (2006) and the General People's Committee (2001) suggested that the privatisation programme in that period faced many difficulties due to mismanagement and the lack of a systematic application. In addition, Hamdo (2004) and Paddy and Zwai (2005) believe that the absence of key factors for a successful privatisation, such as a stock market and necessary data and information about the companies, made it impossible to apply other methods of privatisation, thereby causing the failure of those efforts in improving the efficiency and productivity of privatised companies.

Furthermore, the current privatisation, which began in 2004 and was aimed at the selling of the SOEs to outside investors, faced many problems such as weak capacity of the market to absorb the shares offered. This assumption is confirmed by the changes that have taken place in methods of privatisation and the decisions issued on sales tactics and modification of values, in the cases of delay or non-subscription in shares of companies offered for privatisation.

Further explanation of the measures and resolutions taken for the privatisation of public companies in that particular period can be taken to discover the nature of the problems that hindered the process. Initially, in 2003, the General People's Committee (Prime Ministry) issued Resolution No. 31 regarding the adoption of regulations for the privatisation of companies and public economic units. Then, in the same year, it issued Resolution No. 313 on the adoption of the programme of expansion of the ownership base. These two resolutions provided that the process of stock financing should be made in cash directly from the subscribers, with the possibility of using the following:

- (i) The contribution of citizens withheld under Article 8 of Law No. 1 of 1986;
- (ii) Financial receivables for employees in targeted companies;
- (iii) Loans from financial institutions;

- (iv) Settlement with the former owners of property (in cases of nationalisation);
- (v) Contributions of different financial institutions;
- (vi) Foreign capital (joint investment);
- (vii) The amounts allocated for the programme of distribution of wealth.

Accordingly, the initial public offering (IPO) of shares in some companies took place at the beginning of 2004, and due to the absence of a stock market, offices of contract editors were tasked with completing the subscription processes. The experience indicated that there have been some drawbacks to this method; for example the advertising process for the sale does not give a complete picture of companies' situations, and does not provide sufficient data on the financial and legal positions, employment, and on whether the assets are sufficient for production to continue (Paddy and Zwai, 2005). In addition, although there was a timescale for the sale of companies offered for privatisation, the unwillingness of investors to buy the offered shares caused a delay in the programme. As a result, the General People's Committee had to review the manner in which the shares of the targeted companies were marketed, and it made some amendments to the relevant regulations. In 2004, the General People's Committee issued Resolution No. 100 on the determination of some of the particular regulations and controls, and the amendment of the values of some public companies in order to accelerate the process of transferring ownership. Then it issued Resolution No. 180 in 2004 on amending some provisions contained in Resolution No. 100. This Resolution empowers the privatisation agency to amend or change the privatisation form in accordance with underwriting results and implementation requirements. In addition, this Resolution provides for the possibility of collecting the privatisation values in the form of periodic instalments over a period of up to 6 years, including a grace period of one year from the date of signing the contract, and the payment period could be extended for two additional years for some companies, according to the conditions of privatisation and the circumstances of the company. It seems clear, therefore, that these Resolutions were attempts by the Libyan authorities to address the problem of the unwillingness of private investors to buy shares in the companies offered for privatisation.

Additionally, it could be concluded that the privatisation programme in Libya faced many problems that led to insolvency and failure of the programme in many cases. Many studies, including Paddy and Zwai (2005), Tapoli (1997), Hamdo (2004) and Paddy and Hamdo (2004) concluded that the most important of these problems were the following:

- (i) Inability to mobilise domestic savings, which resulted in the stalled IPO;
- (ii) Absence of a stock market reduced the chances of adopting effective methods for the privatisation of SOEs;
- (iii) Due to the absence of the stock market, investors did not feel safe in terms of their ability to convert shares to cash easily; this caused damage to investors who subscribed to the companies, as the values of their stocks decreased significantly, and also made new investors unwilling to buy shares;
- (iv) The absence of the stock market resulted in the absence of financial information about the targeted companies, which rendered investors unable to assess companies' situations or to compare companies operating in the market; the lack of information also resulted in the absence of a pressure tool on managers to improve the performance and productivity of the privatised companies;
- (v) The absence of the stock market resulted in the inability of companies in the economy in general, and those targeted in the privatisation programme in particular, to finance themselves by issuing shares, forcing them to rely mostly on borrowing.

Therefore, it seems clear, from the disappointing results of privatisation in the first phase during 1987-1993, and the obstacles facing the implementation of the recent privatisation, that the establishment of a stock market has become an urgent matter in Libya in order to facilitate the transition to the market economy.

6.4.2 The establishment of Libyan Stock Market

The Libyan government realised that the establishment of the stock market was essential for the development of the financial markets but also for the implementation of the privatisation programme; the stock market would be an effective tool to

mobilise savings and turn them into investments in all productive sectors of the national economy, and it would also play an important role in the implementation of the privatisation process and broaden the property base. Accordingly, the General People's Committee issued Resolution No. 105 of 2005, which states that the mission of the establishment of the Libyan Stock Market is to be assigned to the General People's Committee for the Economy, and it shall make all the necessary arrangements to oversee the establishment process and develop the market in order to contribute to investment development and acceleration of the privatisation programme. This decision was based on Law No. 21 issued 2001 on engaging in economic activities, as article 10 of this Law states that the General People's Committee has the right to determine who is responsible for the process of establishing the stock market in Libya. Then, in March 2006, the General People's Committee issued Resolution No. 134 on the establishment of the Libyan Stock Market, with capital of LD 20 million. Accordingly, the General People's Committee of the Economy issued Resolution No. 244 of 2006 on the nomination of the first General Director and the first management committee of the Libyan Stock Market, both in Tripoli and Benghazi. In that period, only 6 companies were listed, and trading operations were recorded manually. In 2008, due to increased trading volumes and to ensure the safety of transactions in the market, the market administration launched the electronic system for trading, clearing, depository and central registry.

Following, in 2008, the General People's Committee issued Resolution No. 436 on the issuing of a new statute of the Libyan Stock Market, transferring the market to the Economic and Social Development Fund (ESDF) and increasing its capital to LD 50 million. At the end of 2008, the Libyan Stock Market issued rules and regulations governing the operation of the stock market, which are supposed to serve the investors and ensure the integrity of the market transactions. As a result, on 16th January 2008, the market shares were offered to the public and private sectors to become a joint stock company owned by a number of legal entities and more than 1,400 shareholders.

6.4.2.1 Laws and regulations of Libyan Stock Market

In 2007, specialists in the Libyan Stock Market, in cooperation with international experts, began to prepare and process rules and regulations governing the stock

market's operation, as well as preparing a bill for the capital market in order to protect investors and ensure the integrity and transparency of transactions in the market (2007, the Annual Report of the Libyan Stock Market).

These laws and regulations can be divided into three categories: First, internal regulations governing the administrative and financial affairs in the market, which were issued by the Board of Directors of the Stock Market in 2007; second, the rules governing market activity issued in 2008; third, the capital market law, which was passed in 2010, to regulate the activity of the market and establish the Capital Market Authority to oversee and control market transactions.

6.4.2.1.1 Internal regulations of the market

The Board of Directors of the Libyan Stock Market, in 2007, issued a set of internal regulations governing the administrative and financial aspects of management and workers in the market, which can be listed as follows (Libyan Stock Market, 2007):

- (i) Regulations for employees of the market;
- (ii) Regulations of training and development;
- (iii) Official missions regulations;
- (iv) Regulations for the Management Committee;
- (v) Financial regulation of the market;
- (vi) Sanctions regulations.

6.4.2.1.2 Rules of the market

In 2008, the Libyan Stock Market prepared a set of regulations, which were issued in the new statute of the market under the General People's Committee Resolution No. 436 in 2008. These regulations are basic rules to regulate the operation of the market to ensure investor protection, safety of transactions, and application of principles of disclosure and transparency in the Libyan Stock Market; they can be summarised as follows (Libyan Stock Market, 2008a):

(i) Regulations of listing and disclosure

These regulations involve many of the provisions and rules governing listing in the Libyan Stock Market including the formation of a listing committee and a definition of their functions, listing requirements, rules of cancellation of listing, and the disclosure and nature of the data and processes that must be disclosed.

(ii) Depositing and central registering regulations

These regulations involve many of the provisions and rules governing the process of depositing and registering of securities in the market, including the identification of the functions of the depositing and registering department, organising the clearing and settlement process, organising the process of purchases, sales and inheritance, and determining the procedures for seizure and freezing of securities.

(iii) Trading regulations

These regulations involve many of the provisions and rules governing securities trading in the Libyan Stock Market, including identifying trading times and places, administrative and technical procedures for trading activity, preventing the exploitation of inside information in securities trading, and the prohibition of price-fixing in the market.

(iv) Brokers' regulations

These regulations involve many of the provisions and rules governing and organising the brokers' activity in the Libyan Stock Market, including conditions and requirements for a brokerage license, functions and responsibilities of brokers, and all administrative and technical measures relating to brokerage activity in the Libyan Stock Market.

(v) Fees and commissions in the market

These regulations regulate and determine the value of fees and commissions paid for direct and indirect services offering by the market to clients and stakeholders, including listing fees, membership, brokerage licenses, underwriting, trading,

grievances, conciliation and arbitration, and services of depositing and registering securities.

(vi) Corporate governance

These regulations include rules and standards governing the management of listed companies in the market in order to ensure best practices that protect the rights of shareholders and stakeholders, including the general rights of shareholders such as access to distributed profits, access to information, attending and participating in the annual meetings, and voting rights. These regulations also include disclosure rules and transparency, including the disclosure of reports and financial statements, and the reports of boards of directors. They also include all issues relating to boards of directors and supervisory committees, such as their basic responsibilities and duties, remuneration of the members, and conditions on the composition and independence of these committees.

It should be noted that this regulation is indicative and not mandatory for listed companies, except for the provisions on disclosure of financial reports and reports of boards of directors.

(vii) Sanctions in the market

This regulation addresses procedures relating to sanctions to be imposed on any procedure that contravenes the provisions of the statute, rules and regulations of the market. It includes a number of issues such as the formation of sanctions committees, identifying their tasks, specifying violations and sanctions, and other matters related to appeals against the decisions of the sanctions committees.

(viii) Grievances

This regulation addresses procedures relating to grievances about decisions of the sanctions committee, board of directors, or the management of the market. It includes the formation of an appeals committee, determining its functions and mechanism of action, and all the complaints procedures.

(ix) Regulation of conciliation and arbitration

This regulation includes rules and regulations governing the function of settlement of disputes that may arise between traders and dealers in the market, including the formation of the conciliation and arbitration council, determining functions of this council, clarifying the nature of disputes, and all procedures necessary to complete the process of conciliation and arbitration.

(x) Regulation of Settlement Guarantee Fund

This regulation includes all the rules governing the operations of the Settlement Guarantee Fund. This fund is based on the compilation of contributions from dealers in the market for the implementation of the settlement directly to their accounts, in order to ensure the fulfilment of obligations arising from trading operations in a timely manner, and creating confidence in the trading market, thereby encouraging domestic and foreign investment dealings in the market.

According to this regulation, all brokers operating in the market are obliged to participate in the Fund and pay subscriptions. The regulation specifies the value of contributions by members, the capital of the Fund, procedures and operational rules of the Fund's daily work, and the settlement of disputes and grievances concerning the administration of the Fund and its members.

It seems, therefore, clear that an integrated legislative framework has been established in the market; this includes a set of regulations governing the operations of the market that will protect investors from non-commercial risks and ensure the integrity and transparency of transactions in the Libyan Stock Market.

6.4.2.1.3 Capital Market Law

In January 2010, the Law No. 11 on the capital market was issued, which is divided into eight parts or sections governing all aspects of capital market activity, and can be summarised as follows:

The first part of this Law, which includes 14 articles, provides for the establishment of an independent supervisory body operating under the supervision of the Ministry of Economy, called the Capital Market Authority. This body seeks mainly to create the

appropriate environment to achieve stability and growth of the capital market through a series of goals such as protection of investors and traders from non-commercial risks, ensuring the integrity and transparency of market transactions, and reducing risks arising from financial transactions.

To achieve these goals, the law set out a range of tasks to be undertaken by the Capital Market Authority, which can be summarised as follows:

- (i) Regulating and controlling the issuance of securities;
- (ii) Regulating and controlling the disclosure of essential information for investors;
- (iii) Gathering information and statistics on the capital market, and publishing reports thereon;
- (iv) Receiving and following up reports and complaints relating to market activity or intermediaries, and taking appropriate decisions including the imposition of sanctions;
- (v) Ensuring the implementation of the accounting and auditing standards in the preparation of final accounts and financial statements of actors in the market;
- (vi) Imposing the standards of corporate governance on listed companies and all those working in the field of securities;
- (vii) Supervising and monitoring the market operations;
- (viii) Issuing and granting of permits and licenses necessary for the exercising of activities related to the capital market;
- (ix) Adopting a proper system to ensure the fulfilment of obligations arising from trading operations;
- (x) Adopting an appropriate system to protect clients in securities, including effective methods to compensate those affected by non-commercial risks.

In addition, this section identifies the entities subject to the control and supervision of the Capital Market Authority; these include all the bodies and institutions that deal in

securities, including the stock market, issuers of securities, brokerage agencies, accounting and audit offices, investment funds, and financial consulting offices.

The second part of this law, which includes 9 articles, provides regulations for the issuance process of securities, and illustrates the types of securities and financial measures necessary for public subscription, as well as stressing the obligations of issuers and companies listed on the market, such as the disclosure of important data and information related to all administrative and financial activities of these institutions.

The third part, which includes 7 articles, regulates the activity of the Libyan Stock Market and identifies its goals and functions; it also clarifies all administrative and financial affairs of the market, such as budget, resources, and the formation and functions of the board of directors.

Part four, which includes 15 articles, regulates the activity of entities operating in the market, including the identification of these entities that operate in securities, regulating their activity and clarifying their obligations. In addition, this section provides for the obligation of all actors in securities to disclose all information, data and statistics, including the statute, basic information on board members and their financial position, financial statements certified by an external auditor, an annual list of the shareholders, any important information affecting the price of securities, and any information requested by the Capital Market Authority, the Libyan Stock Market, or as required by the rules and legislation in force.

Part five, which includes 9 articles, regulates the issues related to investment funds, including the establishment of these funds, administrative and financial affairs of funds, and functions and responsibilities of their management committees.

Part six, which includes 6 articles, regulates procedures for the settlement of disputes, including the formation of committees of investigation, disciplinary matters, grievances, and conciliation and arbitration, as well as identifying the functions and powers of these committees.

Part seven, which includes 5 items, sets penalties for all practices that contravene the provisions of the law, rules and regulations in force in the field of securities.

Part eight, which includes 33 articles, presents a series of general provisions governing a collection of important aspects of the capital market, such as identifying companies obligated to register and list in the market, as this law, in this section, stresses that all joint-stock companies are obliged to register in the Libyan Stock Market and list their securities in accordance with the conditions required by the regulations for the listing process. In addition, this part provides for incentives for companies listed on the market; it points out that many incentives will be offered for any listed company trading on its securities in a period of not less than sixty days per year, such as exemption from income tax for up to five years with the possibility of reducing the tax to 50% after this period, and exemption from customs duties of up to 50%. Furthermore, this section emphasises that the stock market must disclose all necessary data and information, and provide financial statements, trading reports, and reports of any exigent circumstances, as well as preventing members of the Board of Directors and staff in the market from trading securities without the approval of the Capital Market Authority.

It should be noted that the law stipulates that the rules and regulations governing the Libyan Stock Market, which are contained in the statute of the market, remain in effect until the issuance of the regulations of this law.

In summary, it can be concluded that the statute of the Libyan Stock Market includes all rules and regulations governing the operations of the market that are supposed to protect investors from non-commercial risks and ensure the integrity and transparency of transactions in the market. However, there was an obvious delay by the relevant authorities in issuing the law of the capital market and allowing the establishment of an independent body to supervise and control all the processes taking place in the capital market, as this law was only issued in 2010 but the stock market has been operating since 2006. In addition, so far, the related authority has not issued the regulations of this law, and has not established the Capital Market Authority for supervision and control.

It should be noted here that, although the statute of the Libyan Stock Market indicates that all the joint-stock companies with capital exceeding LD 250 million are obliged to register in the stock market, only **12** companies currently appear on the main list and only **13** companies appear on the sub-list of the market. Therefore, the issuance of the regulations of the new law is necessary to force all companies to enrol in the market, as provided for in article 67 of the new law, thereby ensuring the protection of investors' rights, the integrity of transactions, disclosure and transparency, and the application of standards of corporate governance stipulated by the new law.

6.4.2.2 Companies listed on the Libyan Stock Market

Listing in the Libyan Stock Market developed, in terms of the number of listed companies and the diversity of sectors, during the period 2006-2010. This evolution can be demonstrated as follows:

In 2006, there were only three listed companies in the banking and insurance sectors, which increased to 6 in 2007. However, the listing is still concentrated only in the banking and insurance sectors. In 2008, 8 companies were included on the main list, with 9 on the sub-list of the market. Then, in 2009, the number of companies increased to 10 on the main list, and 14 on the sub-list of the market.

It should be noted here that the main trading list includes companies registered in the market that have met all registration and listing conditions; thus their securities can be traded in the main market. Meanwhile, the sub-list of the market includes the companies that registered in the market but did not meet all the listing requirements, therefore, they are in the initialisation phase before moving on to the main list.

In 2010, the number of listed companies increased to 12 on the main list and 13 on the sub-list of the market. These companies operate in different sectors; on the main list there are seven companies from the banking sector and three from the insurance sector. Meanwhile, from the industrial sector there is one company on the main list and eight companies on the sub-list. From the financial services sector, the Libyan Stock Market is included on the main list. In addition, the services and tourism sectors have four companies and one company, respectively, listed on the sub-list of the market. It should be noted that, in 2010, 20 companies from various sectors signed

listing agreements with the Libyan Stock Market; this is expected to improve their liquidity and increase their trading volume in the market. More details about the companies appearing on the lists of the Libyan Stock Market in 2010 are provided in the following tables 6.4-6.6:

Table 6.4: Companies Listed on the Main List in the Libyan Stock Market, 2010

Company	The Capital
Banking Sector	
Al Wahda Bank	108,000,000.00
Sahara Bank	252,000,000.00
Assaray Bank	50,000,000.00
Commerce and Development Bank	33,333,330.00
Gumhouria Bank	200,000,000.00
National Commercial Bank	33,333,000.00
Mediterranean Bank	100,000,000.00
Insurance Sector	
United Insurance Company	10,000,000.00
Libya Insurance Company	70,000,000.00
Sahara Insurance Company	15,000,000.00
Financial Services Sector	
Libyan Stock Market	50,000,000.00
Industrial Sector	
National Cement Company	600,000,000.00
Total	1,488,666,660.000

Source: Libyan Stock Market, Report, 2010.

Table 6.5: Companies listed on the Sub-list in the Libyan Stock Market, in 2010

Company	The Capital
Industrial Sector	
Libyan Company for Tobacco	75,780,000
Development Company for Medicines and Medical Supplies	90,069,530
Development Company for Pipes	23,210,000
Development Company for Refining of Vegetable Oils	14,230,000
Development Company for Tubes	35,000,000
Development Company for Wires and Cables	78,850,000
Development Company for Engineering Industries	36,900,000
National Company for Flour Mills and Fodder	300,000,000
Services Sector	
Al-Rahila Company for Oil Services	50,000,000
Development Company for Medical Services	87,414,108
Development Company for Construction	100,000,000
Development Company for Food Imports	100,000,000
Tourism sector	
Oya Tourism Investment Company	300,000,000
Total	1,891,453,638

Source: Libyan Stock Market, Annual Report, 2010.

Table 6.6: Companies Signed Listing Agreements with the Stock Market

Company	Company
Libyan Iron and Steel	Libya Company for Cables
National Investment Company	Development Company for Agricultural Investment
Al Madar Company	Development Company for Import Transport Tools
Libyana Mobile Phone Company	Libyan Company for Health Facilities
Development Company for Industrial and Services Investments	Libyan Company for Financing and Leasing
Development Company for Tourism Investment and Real Estate	Investment Company for Advertising
Development Company for Building Materials Industry	Libyan Company for Health Insurance
Libyan Joint Company for Cement	Development Company for Pharmaceuticals And Medical Equipment
African Company for Cement	Development Company for the Import of Construction Materials
United Air Company	Airline Oil Company

Source: Libyan Stock Market, Annual Report, 2010.

6.4.2.3 Trading in the Libyan Stock Market

Trading in the stock market is the process of buying and selling securities of listed companies through authorised brokers in the market.

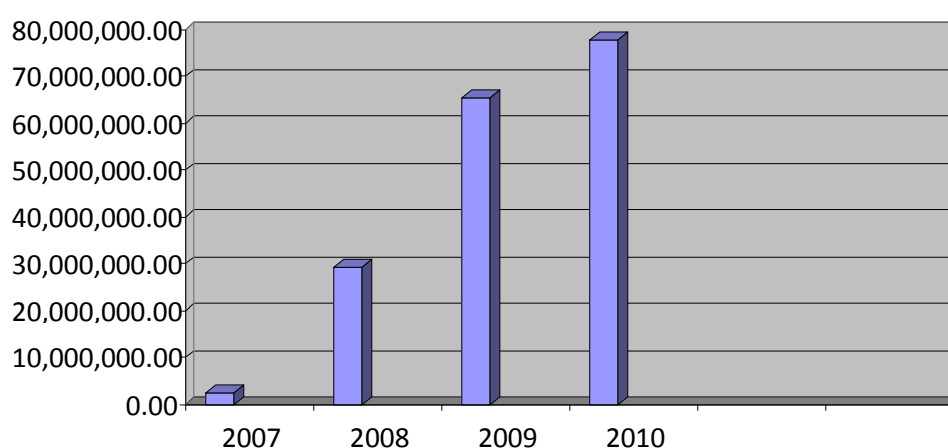
Table 6.7: Trading in Libyan Stock Market (2007-2010)

Statement	No. of Trades	Trading Volume	Trading Value (LD)
2007			
Actual Trading	36	155,283	2,260,705.00
Protected Deals	1	4,788,000	252,300,000.00
Total	37	4,943,283	254, 560,705.00
2008			
Actual Trading	4231	1,549,216	29,276,065.60
Ownership transfer	1032	784,012	8,092,711.00
Protected Deals	1	2,052,000	390,413,520.00
Total	5264	4,385,228	427,782,296.60
2009			
Actual Trading	5912	5,493,846	65,548,389.60
Ownership transfer	23	672,872	6,755,720.00
Total	5935	6,166,718	72,304,109.60
2010			
Actual Trading	9,545	6,069,066	77,948,216.48
Ownership transfer	53	336,170	3,361,700.00
Protected Deals	9	10,160,000	105,878,000.00
Total	9,607	16,565,256	187,187,913.48

Source: Libyan Stock Market, Annual Report, various issues.

The trading volume in the Libyan Stock Market developed clearly during the period 2007-2010; in 2007 the volume of trading was only LD 2,560,705.00 (excluding special protected deals and ownership transfer operations). In 2008, it increased to LD 29,276,065.600 and reached LD 65,548,389.600 in 2009; finally, in 2010, it was expected to increase to LD 77, 948,213.480. Table 6.7 presents further details on the trading volume in the Libyan Stock Market in the period 2007-2010.

Figure 6.4: Actual Trading in Libyan Stock Market in the period 2007-2010



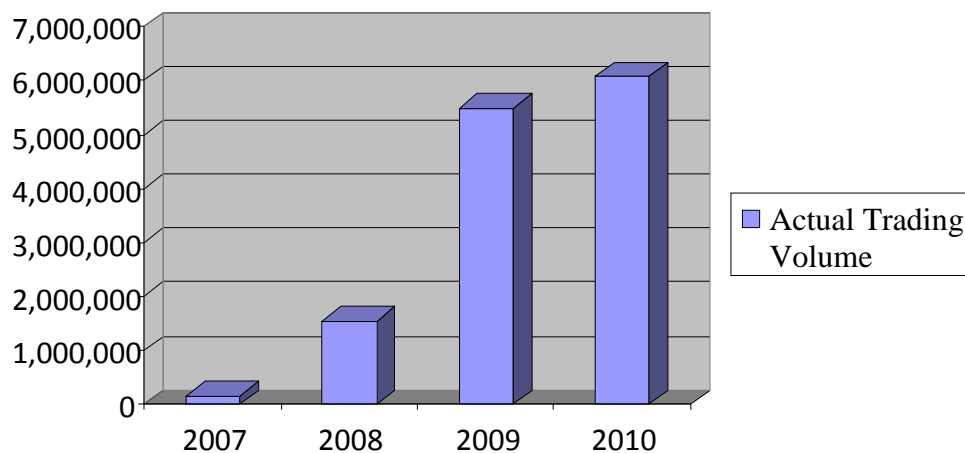
Although the value of total trading in the years shown in Table 6.7 was high, except in 2009, the value of the actual trading was small in comparison. It should be noted that this increase in the total trading value was the result of protected deals conducted in the Libyan Stock Market in these years; in 2007, the value of protected deals was LD 252,300,000.00, which represents more than 99% of the total trading recorded in the Libyan Stock Market in that year. This protected deal, in 2007, was the operation of privatising 19% of Sahara Bank shares to BNP Paribas Bank. In 2008, similarly, there was a massive protected deal with a value of LD 390,413,520.00, equivalent to more than 91% of the total trading recorded in the Libyan Stock Market in that year. This deal, similarly, was the operation of privatising 19% of Al Wahda Bank shares to the Arab Bank. Likewise, in 2010, nine protected deals were conducted in the Libyan Stock Market with a volume of LD 105,878,000.00, which represented about 56% of the total trading recorded in the market. These deals were conducted between the

Privatisation Agency and the Economic and Social Development Fund (ESDF) in the context of privatising public companies.

From Table 6.7 and Figure 6.4, however, it is clear that the value and volume of actual trading in the Libyan Stock Market has been increasing in the period from 2007 to 2010; in 2007 the actual trading value was only LD 2,260,705.00 but increased to LD 29,276,065.60 in 2008. In 2009 it reached LD 65,548,389.60 and, finally, in 2010, the actual trading value rose to LD 77,948,216.48.

Furthermore, the actual trading volume developed significantly; it was only 155,283 in 2007, and then increased to 1,549,216 in 2008. It continued to increase in 2009 and 2010, reaching 5,493,846 and 6,069,066, respectively. Figure 6.5 shows the evolution of the actual volume of trading in the Libyan Stock Market in the period from 2007 to 2010.

Figure 6.5: The Evolution of the Actual Volume of Trading in the Libyan Stock Market



According to the report of the Libyan Stock Market, in 2010 the securities of Gumhouria Bank were the most active in terms of value and volume of trading; the trading value was LD 16,734,255.24, equivalent to 21.5% of the total actual trading value in the Libyan Stock Market in 2010. Furthermore, the trading volume of Gumhouria Bank securities was 1,260,176, equivalent to about 20.8% of the total actual trading volume in 2010. The Sahara Bank comes second, with a trading value

of LD 14,697,232.78, equivalent to about 19% of the total actual trading value in 2010. Moreover, the trading volume of Sahara Bank securities was 1,143,839, equivalent to about 18.8 % of the total actual trading volume in 2010. Meanwhile, it is clear that the securities of the National Cement Company were the least actively traded in 2010; the trading value was only LD 278,839.58, equivalent to about 0.4 % of the total actual trading value, and the trading volume was only 22,999, equivalent to about 0.3% of the total of actual trading volume. Table 6.8 gives more details on the volume and value of trading by companies listed on the Libyan Stock Market in 2010.

Table 6.8: The Volume and Value of Trading by Companies Listed on Libyan Stock Market in 2010

Company	Trading Value (LD)	%	Trading Volume	%
Gumhouria Bank	16,734,255.24	21.5	1,260,176	20.8
Sahara Bank	14,697,232.78	19	1,143,839	18.8
Commerce and Development Bank	14,096,153.64	18	744,986	12.3
Al Wahda Bank	9,263,925.61	12	788,340	13
Libyan Stock Market	7,911,370.94	10	838,116	13.8
Libya Insurance Company	5,438,053.90	7	536,641	8.8
United Insurance Company	2,237,969.51	2.8	105,548	1.7
Sahara Insurance Company	2,258,873.29	2.9	177,679	2.8
Assaray Bank	1,032,371.02	1.3	139,600	2.3
National Commercial Bank	3,552,200.02	4.5	284,808	4.7
Mediterranean Bank	446,967.95	0.6	26,334	0.4
National Cement Company	278,839.58	0.4	22,999	0.3
Total	77,948,213.48	100	6,069,066	100

Source: Libyan Stock Market, Annual Report, 2010.

It is worth mentioning that the main list of the Libyan Stock Market includes 6 privatised companies: the Libyan Insurance Company, Gumhouria Bank, Sahara Bank, Al Wahda Bank, National Commercial Bank and the National Cement Company. These companies and banks represent about 85% of the total capital of companies listed on the Libyan Stock Market. Furthermore, the total trading value of these companies in 2010 was LD 49,964,477.13, equivalent to 64% of the total actual trading value in the Libyan Stock Market. Likewise, the total trading volume of these companies in 2010 was more than 4 million securities, equivalent to more than 66% of the total actual trading volume in the Libyan Stock Market. In addition, the protected deals conducted in the stock market concerned the privatisation of public companies and banks to strategic investors. Therefore, it is clear that the privatisation

of state-owned enterprises had a positive impact on the capital and activity of the Libyan stock market. At the same time, the market has played an increasing role in the sale and privatisation of public sector enterprises.

6.5 DISCUSSING AND ASSESSING THE ADEQUACY OF THE FINANCIAL AND ECONOMIC ENVIRONMENT IN LIBYA

This chapter has discussed many important issues relating to the creation of an economic and financial environment suited to the changes that have taken place in the Libyan economy. These issues include policies adopted by the Libyan government to liberalise the market, the imposition of hard budget constraints to stimulate competition in the market, the reform of the banking sector, and the establishment of a securities market.

Regarding the issue of market liberalisation, it seems clear that the market was really restricted; thus the role of the private sector was very limited and all economic activities were dominated by public sector enterprises. This dominance has produced many problems and imbalances in the Libyan economy. Consequently, the Libyan government realised the necessity of adopting liberal policies in order to provide a competitive environment conducive to the success of the transition to the market economy. Accordingly, the government adopted a new commercial policy, in 2002, for the liberalisation of external and internal trade, as well as establishing a number of procedures to implement this policy.

At the internal trade level, many resolutions were taken for the liberalisation of prices and the phasing out of the mandatory pricing system, which had been applied for decades. These decisions identified a range of goods that should be subject to a compulsory pricing system, arguing that the lack of competition requires a mechanism to protect consumers from exploitation. On the other hand, recently in 2010, the legislative authority passed a new law on commercial activity including a set of provisions that prevent monopolistic practices and help to protect the consumer. However, decisions issued to identify goods subject to a pricing system still include a very large number of goods; this is totally incompatible with policies geared to the transition to a free economy governed by the forces of demand and supply. In addition, the government did not pay much attention to the establishment of

independent agencies for the protection of the consumer; furthermore, a competition council, which would monitor and enforce the new law provisions, has not yet been created.

With regard to the removal of obstacles to market entry and facilitate the private sector's contribution to the economy, it can be noted that the relevant authorities made clear efforts through the issuance of laws that allow and encourage the private sector to participate in various forms of economic activity. Moreover, the government established specialised departments and issued a series of decisions in order to facilitate administrative procedures for licensing and registration of private companies. However, there are still some obstacles related to certain regulations, such as the minimum capital required to establish a joint-stock company, which may diminish the willingness and ability of private investors to engage in business.

Furthermore, the Libyan government has taken several measures related to exports, imports, and exchange rate policies in liberalising external trade; it cancelled all quantitative and administrative restrictions on exports, except on a very small number of products subject to demand in the domestic market, in addition to the creation of a specialised centre, issuing a series of decisions that would encourage exporters and develop the export activity. Moreover, the Libyan government made great efforts to liberalise imports, including the abolition of quantitative restrictions on imports, and the abolition of the import budgets system, as well as narrowing the scope of the monopoly of imports, except for a very limited number of goods due to security and health reasons. Likewise, many measures were taken in relation to exchange rate policy, including linking the Libyan dinar with Special Drawing Rights (SDR) at an exchange rate appropriate to the economic situation and to eliminate the black market in Libya. Additionally, the government issued decisions to abolish restrictions on foreign exchange and remittances, which contributed to the liberalisation of trade and stimulated competition in the Libyan market.

With respect to the imposition of hard budget constraints, the Libyan government took a series of measures that have made progress in preparing the general budget, which may improve public finance management and simplify and facilitate the control of government expenditure. However, the allocation of large amounts to investment

funds and specialised public financial institutions that operate outside the general budget may create some uncertainties about the dealings of the government. Furthermore, these institutions may become subjected to government pressure and used as a tool to support and subsidise loss-making companies or certain sectors. As a result, this policy could harm competition in the market and adversely affect the ability and willingness of the private sector to engage in economic activity, which is inconsistent with the objectives of privatisation and economic reform.

Furthermore, several measures were taken by the monetary authorities to reform the banking sector, which may help the economic reform programmes to succeed. These measures include the restructuring and privatising of public commercial banks, which may be an effective solution to the problem of excessive subsidies provided by the government for public or newly privatised companies. Moreover, measures were taken for the establishment of private banks and the entry of foreign banks; this will play an important role in stimulating competition, thereby improving the efficiency of the banking sector in Libya. In addition, the monetary authorities adopted a series of measures that give commercial banks more flexibility in making decisions related to credit and investment policies; this helps to stimulate competition among commercial banks on the one hand, and contributes to the financing and promotion of the private sector to engage in economic activity on the other. However, the role given to the specialised public banks, which do not operate under the direct supervision of the Central Bank, may adversely affect the policies adopted to reform the banking sector. In addition, these specialised public banks, as mentioned earlier, could be exposed to government pressure to provide subsidies or non-commercial loans for companies or certain sectors, thereby having a possibly adverse effect on competition in the banking sector on the one hand, and on the performance and efficiency of companies operating in the Libyan economy on the other hand. This means that results may be completely incompatible with the objectives of the programmes of privatisation and economic reforms.

Regarding the creation of an organised stock market, the government established the Libyan Stock Exchange and set out all the rules and regulations governing its operations and activities. Available data, at least until the Revolution of 2011, show that there is a reasonable development in the companies listed and trading in the

Libyan Stock Market. However, the delay of relevant authorities in issuing the capital market law and creating an independent supervisory department may affect the investors' confidence and the integrity and transparency of the stock market. Therefore, the government should speed up the process of establishing this body to ensure the creation of a suitable environment for the trading of securities, which is supposed to facilitate the privatisation of public sector companies, as well as developing the private sector in the Libyan economy.

CHAPTER 7

ASSESSING THE APPROPRIATENESS OF THE LEGAL ENVIRONMENT FOR THE MARKET-BASED ECONOMY IN LIBYA: AN ANALYTICAL APPROACH

7.1 INTRODUCTION

As identified by a number of contributors (such as: Lieberman and Fergusson, 1998; Desha, 1991; Kikeri *et al*, 1997; Kikeri and Nellis, 2002; Parker and Kirkpatrick, 2005; Nellis, 2007), creating an appropriate legal framework for a market economy is one of the most important requirements for the success of the privatisation programme and the transition to an economy that relies more on the private sector.

Past experience has proved that the policy of privatisation varies from one country to another. In many countries, especially transitional countries, privatisation is not limited to the sale of SOEs but is the process of transition from a planned economy, dominated by the public sector, to a market economy, which relies more on private investments; therefore, the success of this policy in such countries requires additional arrangements beyond those required in capitalist countries (Lieberman and Fergusson, 1998; El Dean, 2002). One of the most important of these additional requirements is the creation of a legal framework that is consistent with the change in the nature of economy and that will encourage the private sector to contribute to economic activities, instil confidence among investors and protect their rights, and create the appropriate environment for competition in the market (Desha, 1991; Nellis, 2007; El Dean, 2002).

The legal framework, in the transitional countries, may require the issuance of a number of laws that may not be present, or changes in laws or constitutional provisions already applied with the objective of establishing coherence between the new economic structure and the corresponding legal requirements. Accordingly, this new framework may include a number of laws such as investment law, capital market law, corporate law, competition law, employment law, bankruptcy law, tax law, and others. In addition, many authors such as Gray (1997), Parker and Kirkpatrick (2005)

and Nellis (2007) believe that there are issues that have priority and must be included in the legal framework for a market economy to ensure the success of the transformation process and achieve the desired results of the SOEs privatisation. They assert that the most important of these issues is the definition and protection of private property to encourage the private sector and private investors to participate in economic activity, as well as to monitor the market to prevent monopolistic practices and to stimulate competition in order to protect the consumer.

This chapter, hence, aims to explore the aspects of the legal framework and assess its effectiveness for privatisation in Libya. In doing so, it discusses the issue of protection of private property in Libya through the analysis of Libyan legislation, as well as assessing the suitability of the constitutional provisions for the privatisation policy and the transition to the market economy in Libya.

Secondly, this chapter explores the issue of competition law and the existence of independent bodies that should impose this law to create a proper investment environment by preventing monopolistic practices and protecting consumers in the Libyan market.

Thirdly, it discusses the issue of a legal framework for an effective corporate governance structure that would guarantee the rights of investors and improve the management mechanism to achieve desired results from the process of transfer of ownership of public companies.

7.2 PROTECTION OF PROPERTY RIGHTS

Protection of private property is the foundation stone for the construction of an appropriate legal framework for a market economy (Gray, 1997; Parker and Kirkpatrick, 2005; Nellis, 2007). Many specialists such as Gray (1997) believe that the private sector and private investors are not expected to contribute to economic activity without a clear law to protect private property.

In socialist countries, private property is usually very limited and does not constitute great importance in the economy; thus, even legislation that protects property, in fact, is limited in scope and importance compared with legislation on public ownership in such countries (El Dean, 2002). Therefore, the privatisation process and the transition

to an economy based more on the private sector usually require a review of legislation to ensure the protection of the property of private investors.

In this regard, Libya is no exception; it had adopted the socialist ideology and policies of the planned economy for a long period until the recent revolution. As a result, its economy relied heavily on the public sector, while the role of the private sector and private property was very limited. Thus, it is necessary to assess the suitability of applied laws and legislation to the changes in economic structure witnessed recently in the country. Therefore, an analysis of the Constitution might be an important starting point for assessing the position and attitude of the legal system to private property; as the Constitution reflects the ideology of the regime and the economic policies adopted.

7.2.1 Constitution in Libya

Although constitutions differ in type and form, all are designed to clarify many of the core issues of a country, such as the political and economic regime of the country, and the provision of a climate of freedom that guarantees the basic rights of all individuals without discrimination; such a climate is a key factor in human wellbeing and people's ability to engage in innovation and creativity, helping to develop various areas of human life (Aputota, 2009).

Although Libya has had no permanent and unified constitution since 1969, there have been constitutional proclamations and acts that have the same function. A constitutional proclamation issued in December 1969 abolished the Libyan Constitution applied before this period. It included 37 Articles covering many of the core issues such as the goals of the state, the political system, citizens' rights, the form of economic system, the nature of property rights in Libya, and others. It should be noted that this constitutional proclamation was supposed to be temporary until a permanent constitution could be issued, as stated in Article 37: "The present constitutional proclamation shall be in effect until a permanent constitution is issued. It will be amended by the Revolutionary Command Council only in case of necessity and in the interest of the Revolution". However, until 2011, no permanent constitution had been issued, and this proclamation was still in effect. Later, a number of documents and key legislations were issued, such as the Declaration in March 1977

on the establishment of the authority of the people, the Human Rights Act in 1988, and the Promotion of Freedom Act no. 20 in 1991. Collectively, these laws and documents and the constitutional proclamation of 1969 were considered the constitutional acts in force in Libya until the year 2011 (Libyan Supreme Court, 2011), when the existing regime fell.

7.2.2 Private Property in the Libyan Constitutional Provisions

As mentioned earlier, the Constitutional proclamation issued in December 1969 and key legislations issued later are the constitutional acts in force; thus, it is not permitted to issue any laws or legislations contrary to the provisions of these constitutional acts (Libyan Supreme Court, 2011). In this context, many specialists in Libya, such as Aputota (2009), former President of the Supreme Court in Libya, claim that these constitutional documents include all the rights and fundamental freedoms that are consistent with the provisions contained in international covenants and conventions relevant to civil, political, economic, social and cultural rights. In fact, these constitutional documents addressed many economic rights, including many of the texts that emphasised the protection of these rights such as the right to work, the right to receive wages for work, the right to found trade unions that protect the rights of workers, professionals and artisans, and other economic rights.

With regard to private property rights, these constitutional acts are keen to ensure these rights; the Human Rights Act of 1988 stipulated that private property resulting from the individual's effort is protected and inviolable, and may not be compromised unless it is in the public interest and there is fair compensation. Furthermore, the Promotion of Freedom Act stipulates that private property is secure and inviolable if it resulted from a legitimate reason, without exploiting others or hurting them physically or morally, and it may not be confiscated except for the purposes of public interest and against fair compensation. Moreover, Article No. 8 of the Constitutional Proclamation of 1969 stipulates that public ownership is the basis for the development of society and the achievement of the adequacy of production; furthermore, non-exploitative private property is inviolable and may not be confiscated except in accordance with the law. It seems, therefore, clear that the constitutional provisions in Libya and the key constitutional documents stressed that private ownership is

inviolable and shall not be taken away except in accordance with the law and just compensation.

These constitutional documents, however, stressed that private property is legitimate on the condition that it resulted from the effort of the owner and without exploitation of the efforts and needs of others. Accordingly, this condition, which seems socialist in nature by introducing a social objective, left the field open for the many possible interpretations that may affect the protection of private property. Importantly, the lack of a unified constitution created the problem of conflicting laws issued in this regard (Otman and Karlberg, 2007; Aputota, 2009).

In this context, it should be noted that many of the laws issued for the protection of private property rights, such as Investment Law No. 5 in 1997 and the Foreign Investment Law No. 7 in 2004, stipulate that all actions that may affect the private ownership of economic projects, such as nationalisation, dispossession, confiscation, custody, freezing or others, are prohibited unless imposed by law or a court order; otherwise the victim shall be entitled to prompt and fair compensation which should be based on the current market prices. As can be seen, these laws emphasise respect for and guarantee of private property in Libya, whether for domestic or foreign investors. However, there were many laws issued in the 1970s and 1980s that imposed many restrictions on private property. For example, the Law No 38 in 1977 concerning certain provisions relating to real-estate ownership stated that ownership merely for possession purposes is prohibited. In addition, Law No. 4 of 1978 on real-estate property provided that every adult citizen has the right to own a house as long as he resides therein. Under this legislation, many restrictions were placed on the ownership of real estate in Libya; the citizens, according to this Law, is not allowed to possess more than one house. It also gave any Libyan citizen who live in a rented house the right to own it, after compensating the original owner. It seems clear that this law was issued in accordance with the constitutional provisions, as mentioned earlier, which emphasise that private property or ownership is inviolable, as long as it does not exploit the efforts and needs of others. Accordingly, these laws were a result of the interpretation such as whether owning more than one house is exploitation of the needs of others. It is worth mentioning that these interpretations are based on the socialist thought adopted in Libya in that era.

In 1984 the legislative authorities issued Law No. 21 on certain provisions relating to public benefit and the ownership of the land. This Law provides that no compensation will be paid for property located in the path of public benefit projects, unless this property was the only house or piece of land suitable for building on, or it was property used by the owner to carry out a craft or profession. Thus, it seems clear from the text that this Law threatens private property and creates a lack of confidence among private owners and investors. Furthermore, the legislative authorities issued Law No. 7 of 1986 on the abolition of land ownership. This Law states that the land in Libya is not owned by anyone, and may not be the object of the actions of ownership transfer. In addition, the second article of this Law stipulates that every citizen has the right to possess land only in the case of use, be it in agriculture, grazing, or others, provided that he is exploiting only his own and his family's efforts, without exploiting the effort of others, and only in the scope of satisfying his needs and those of his family.

Under these laws, the salient features of ownership in Libya differed from the usual features such as the right to transfer ownership, exploitation and use. In addition, these laws imposed many restrictions on property and, hence, give legal justifications for the expropriation of citizens' property when they do not meet the conditions set out in these laws.

It should also be noted that, in the 1970s, many laws and regulations were issued in order to nationalise properties and enterprises owned by individuals and foreign companies. In July 1970, the Revolutionary Command Council issued a decision on the repossession of properties of the Libyan people; this led to the nationalisation of all property of Italians living in Libya, which was then distributed to citizens in need. Moreover, in December 1970 the Revolutionary Command Council issued a law on the nationalisation of banks, which led to the nationalisation of foreign bank quotas in the banking sector in Libya. Then, in a similar way, the legislative authorities issued several laws and decisions relating to the nationalisation and expropriation of many activities, properties and companies in various fields, both foreign and local (Bsikery, 2006).

It should be noted here that these laws were in line with the socialist ideology that was adopted in the 1970s and 1980s in Libya, as well as in accordance with the provisions of constitutional documents and laws which reflected the spirit of socialist-based Constitutional understanding. For example, the constitutional proclamation of 1969 provides that the aim of the state is the realisation of socialism, and the state will endeavour to liberate the national economy from dependence and foreign influence. It also states that public ownership is the basis of the development of society and self-sufficiency in production, while private ownership, if it is non-exploitative, is protected, and expropriation will take place only in the public interest and in accordance with the law. In this regard, Aputota (2009) believes that these constitutional provisions have given legitimacy to many of the legislations and laws that confiscated private property on the grounds that the public interest is the interest of all citizens and must be given priority over individual interests; furthermore, the condition of non-exploitative private property was a major reason for the adoption of several resolutions and laws of expropriation.

It seems, therefore, clear that the constitutional provisions, as a result of adopting the socialist system, contributed to the issuance of laws and legislation restricting private ownership dramatically in Libya, which negatively affected the confidence of the private investors, both foreign and domestic, and their desire and willingness to contribute to economic life. Accordingly, the issuance of a modern and unified constitution that explains the features of private property and removes any ambiguity could be a significant and effective solution for restoring the confidence of domestic and foreign private investors, hence ensuring their contribution to economic activity and stimulating the transition process towards the market economy.

It is important to note that, after the suspension of international sanctions on Libya in 2003 and Libya's adoption of policies of economic reform, the Libyan authorities sought to issue a Draft Constitution including all key legislation that protects the rights of individuals. This was stated by Saif Al Islam Gaddafi, the son of the former Libyan leader, in the first forum of the National Organization of Libyan Youth, in Sirt, in August 2006 (Otman and Karlberg, 2007). However, until 2011, this Constitution had not been issued, possibly because some policy-makers in the Libyan

government believed in socialist ideology and considered that these liberal ideas would lead to the exploitation of the needs of Libyan citizens.

In reflecting on the current developments, however, in August 2011, following the revolution that toppled the regime of Colonel Muammar Gaddafi, the Transitional National Council issued a new constitutional proclamation. This new constitutional statement affirms, in Article 8, that “The State shall guarantee equal opportunities, and is working to provide a decent standard of living, the right to work, education, health care and social security for every citizen, and guarantee the right of individual and private property”. Furthermore, Article 16 of this proclamation states that “Private property is protected; the owner is not prevented from disposing of his property, except in the limits of the law”. Therefore, the time might be appropriate to confirm and constitutionalise private property rights and clarify the parameters of the economic system, which relies on the private sector and mechanical functioning of market, by expediting the issuance of a unified constitution, especially after the change in the political system which embraced and defended socialist ideas that contradicted, in recent years, the transitional and reform policies.

7.2.3 Privatisation and Constitutional Provisions in Libya

Many of the materials contained in the constitutional documents and legislation emphasise the socialist nature of the Libyan economy, which raises a lot of controversy and doubt about the legitimacy of the privatisation programme and arrangements made for the transition towards a market economy. The Constitutional Proclamation of 1969, which is considered as one of the most important constitutional documents in Libyan history (Libyan Supreme Court, 2011), included many of the materials that confirm the socialist system, such as Article 6 which states:

“The aim of the state is the realization of socialism through the application of social justice which forbids any form of exploitation. The state endeavours, through the edification of a socialist community, to achieve self-sufficiency in production and equity in distribution. Its aim is to eliminate peacefully the disparities between social classes and to attain a society of prosperity”.

In addition, Article 7 stressed public ownership and the need for economic independence: “The state will endeavour to liberate the national economy from dependence and foreign influence, and to turn it into a productive national economy, based on public ownership by the Libyan people and on private ownership by

individual citizens”. In this context, Article 8 of this proclamation also stressed that public ownership is the basis of the development: “Public ownership is the basis of the development of society, of its growth and of self - sufficiency in production ...” In addition, the Declaration of March 1977 on the establishment of the authority of the people, which was also one of the constitutional documents until 2011 (Libyan Supreme Court, 2011), stressed that the Libyan people confirmed their commitment to socialism as the economic system in Libya.

It seems, hence, clear from the textual analysis of these constitutional provisions that the Libyan government, since the beginning of the 1969 revolution, was committed to a socialist system, as well as emphasising the importance of public ownership on the grounds that it is the ownership of the people, and is an efficient way to achieve justice, equality and economic independence.

It should, however, be noted that the constitutional provisions contained in these important constitutional documents did not prohibit private property and did not explicitly state the illegality of the transfer of ownership of public enterprises. In addition, the issuance of several legislations by the General People’s Congress, which is the legislator in the former Libyan regime, may give a legal basis for the policy of ownership transfer of public companies. These legislations and resolutions include, for example, Law No. 9 of 1992 which provided for the possibility of transfer of ownership of SOEs, and gave the General People’s Committee (the Prime Ministry) the powers to take measures required to implement the process. Additionally, the General People’s Congress adopted Resolution No. 15 of 2001 on the formation of a committee to restructure SOEs with the possibility of selling their shares to the private investors, establishing joint investments, or even liquidation in the event of very bad conditions. Moreover, in 2001 the General People’s Congress approved the regulations for transfer of ownership issued later in 2003, which provide for improving the efficiency of the Libyan economy by transferring ownership of state enterprises and stimulating the private investments in Libyan economy.

7.2.4 Summary

In summary, it can be said that, although constitutional provisions had not been in conflict with private property and transfer of ownership of SOEs, some legislation has

been issued in support of this. However, some of the constitutional provisions discussed above should be reviewed, especially in the light of the arrangements and economic reform policies implemented recently, which are not limited only to the transfer of ownership of some SOEs to the private investors but also extend to the policies of market liberalisation and the transition to a free economy. Therefore, these constitutional provisions may create some controversy and uncertainty about the nature of the Libyan economy, as privatisation and liberalisation policies give a signal that the Libyan economy is shifting from a planned economy, which is controlled by the state through its economic enterprises, to a free economy depending more on the private investments and governed by the rules of the free market. On the contrary, constitutional provisions, in force until 2011, still stressed that the economic system in Libya is socialist, and the state and people are committed to the socialist option in economic life.

However, the new constitutional proclamation issued in August 2011 stipulates in Article 34 the abolition of the constitutional documents in force, with the continued application of existing laws and legislation that are not inconsistent with this proclamation. It should be noted here that the new proclamation stressed that private property is inviolable, and the owner has the full right to dispose of his property, though it did not mention the form of the economic system of the country. Thus, the time might be appropriate to address the conflict and ambiguity in the Libyan Constitution on the nature and features of the Libyan economy, since the new Constitution is expected to be issued in the coming months with many months of delays.

Having discussed the foundational issues in relation to the Constitutional documents and identified the non-private property and, hence non-privatisation oriented nature of the provisions in these documents, the following section discusses another important legal institution, namely competition law, with the objective of exploring whether the current legal structure offers an effective framework for privatisation and a proper environment for the private investment.

7.3 COMPETITION LAW

Privatisation, especially in transitional countries, is the process that will reduce or change the role of the government in economic life, in the commercial, industrial or service sectors, providing more room for the private investments. One of the most important points in support of the policy of privatisation is that private companies are expected to operate more efficiently than SOEs, especially in a competitive environment (Nellis, 2007). Similarly, many authors such as Khemani (1999), Gray (1993) and Nellis (2007) believe that competition is a prerequisite for improving the efficiency of economic enterprises, hence improving the efficiency of economic resource allocation, which is one of the most important objectives of privatisation and the transition to a market economy.

In other words, the lack of competition means that the privatisation of SOEs may only imply a change in ownership without a change in the behaviour of the enterprise or the business environment in which it operates. The consequence of this is that the privatisation, in this case, is changing the situation from the monopoly of SOEs to a private sector monopoly. Therefore, this requires an intervention by the government to prevent any monopolistic behaviour from occurring, which can be in the form of new legislation to promote competition and fight monopolistic practices with the objective of protecting the consumer on the one hand, and making improvements in economic efficiency on the other.

Privatisation and the transition to the market economy, hence, does not necessarily mean the withdrawal of the state from economic life, but it may mean changing the role of the state from the producer or trader to the role of the observer and regulator who issues and imposes required laws and regulations for the efficient running of the market mechanism as the primary objective of privatisation.

Further details about the competition law and its goals as well as its importance for the success of the privatisation process and protection of the consumer were all discussed previously in Chapter 3 in terms of general issues. This section, however, contextualises the discussion in terms of the Competition Law in Libya in light of changes taking place in the Libyan economy with the objective of assessing the appropriateness of the Libyan legal system for these changes.

7.3.1 Competition Law in Libya

It should be noted that, over the last two decades in Libya, several laws have been issued to encourage, private investment and private sector participation in economic activity, such as Law No. 9 in 1992 on ‘engaging in economic activities’, Law No. 21 of 2001 on ‘certain provisions of the practice of economic activity’, Law No. 5 of 1997 to ‘encourage foreign investment’, Law No. 6 of 2007 to ‘encourage domestic investment’, and Law No. 9 of 2010 to ‘promote investment’ among other relevant legislations. However, despite the fact that the Libyan government began to privatise the public sector companies at the end of 1980s, the competition law was only issued in 2010. Considering that competition law is the essential infrastructure for the efficient running of market mechanisms in fulfilling the aim of privatisation, not issuing that Completion Law until 2010 implies a paradox and a difficulty in achieving the aim of privatisation.

As mentioned in Chapter 4, the Libyan government adopted a mandatory pricing system for determining the prices of goods and services in the Libyan market, arguing that this system would be an effective means of protecting consumers. It should be noted that, even after the adoption of privatisation policies in Libya, the government continued to enforce this system in spite of attempts to phase out it; this is not consistent with attempts to encourage the private investments economic and the transformation towards a market economy, which are the objectives of privatisation policies, among others.

Only in 2010, did the legislative authorities in Libya issue Law No. 23 on business-related matters; this included a series of provisions governing the issue of competition and preventing monopolistic practices in the market. It should be noted that this law annulled Law No. 13 of 1989 on the control of prices, which means the cancellation of the mandatory pricing system.

A part or Section 11 of the new Competition Law of 2010 included 24 articles aiming to institute competition and regulate the market to prevent monopolistic practices and create a competitive investment environment. This section aims to identify the legal provisions applied in recent years for free price-setting in the market, reduction and elimination of monopoly power, regulation of the commercial competition and

determining the rules in order to ensure the efficiency of the market, transparency and fairness in transactions. The legal provisions contained in this section can be listed and discussed as follows:

Article 1284 states that prices of goods and services should be determined in accordance with the principles of competition, with the occasional and temporary exception of certain goods and services to be identified by a decision of the related minister or the Prime Ministry, due to exigent circumstances.

Article 1285 defines acts and anti-competitive practices. It stipulates that the provisions of this law prohibit all acts and implicit and explicit agreements that aim to breach the principles of competition and the application of market rules. These provisions can be described as follows:

- (i) Agreements or actions that aim at or lead to the setting of prices of goods and services, or are prejudicial to the rules of supply and demand, be it to raise or reduce prices;
- (ii) Preventing or hindering other investors from entry to or exit business activity;
- (iii) Segmentation of markets or sources of goods and services on a geographic, quantity or seasonal basis (with the objective of price discrimination);
- (iv) Refusal to sell and purchase, imposing additional restrictions, or setting conditions not related to goods and services subject to the deal;
- (v) Collusion in bidding, public tenders and auctions, or imposing unjustified conditions;
- (vi) Dumping, which means selling imported goods (similar to the locally produced goods or with the same specifications) at a price below the price charged in the home market, or less than the real cost, thus causing harm to the domestic investors and products, or significantly hindering the production of such goods locally.

Article 1286 addressed the actions that are illegal in the field of intellectual property, such as fraud and counterfeiting of registered trademarks, the exploitation of the

achievements of others, and obtaining undisclosed information illegally, such as spying, theft, fraud, and abuse of copyright and systems of electronic information.

Article 1287 states that a business is in a controlling or dominant position when it accounts for a share of the relevant market, and it should not exceed the percentage determined by the decision of the relevant minister; it should not, in any case, exceed 30% of that market.

Article 1288 states that businesses are banned from all commercial activities and practices that aim to dominate or influence market activity; such practices include:

- (i) Determining prices of goods and services in violation of the rules of the market;
- (ii) Refraining from the sale or purchase of goods and services, concealing or establishing a monopoly over goods in order to influence prices;
- (iii) Refusal to deal with anyone conducting commercial activities or imposing unequal discriminatory conditions without any legitimate legal or financial reasons;
- (iv) Interfering in any way to limit the production processes, hindering the development and manufacturing of goods and services, or limiting the entry of goods into the market.

Article 1289 states that the formation of clusters leading to the influencing or control of market activity is prohibited, which also prohibits the segmentation of markets, customers and sources of raw materials on any basis contrary to the principles of competition. The Article also introduces some exceptions to this in the following cases: businesses that contribute to the creation of technical or economic progress which leads to lower costs or improves conditions of production and distribution; and businesses that improve the competitive position of some small units. However, the Article stipulates that exceptions in all cases require the approval of the relevant minister. In this regard, Article 1290 states that the relevant minister must consult with the Competition Council on issues relating to the creation of a dominant position of commercial projects.

Article 1291 states that no business or trader is allowed to sell goods and services at prices less than cost, with the exception of perishable goods, some seasonal goods and services, and stocks or commodities that are stagnant or obsolete.

As can be seen, these Articles address in detail all the practices including monopolistic practices that may adversely affect competition in the market, and hence consumer welfare, with a few conditional and necessary exceptions that may be imposed in some special circumstances.

In addition, Articles 1292 to 1300 aim to set out the rules relating to the establishment of Competition Council, as well as clarifying its terms of reference, rules of procedure and working mechanism. Meanwhile Articles 1301 to 1304 identify the penalties imposed by this law as a result of any violation of the provisions and rules of competition. These sanctions include financial penalties for some practices, detention, and suspension and withdrawal of activity licenses in some cases.

It can be stated, therefore, that the issuance of competition law in Libya is a positive step towards creating a favourable legal environment for the efficient functioning of market economy; as this law aimed at protecting consumers from monopolistic practices that may be exercised by the actors in the market, as well as being necessary to improve the competitive environment in the market, encourage private investors, help to improve the efficiency of the market mechanism, and hence improve the allocative efficiency of economic resources in the Libyan economy. However, it seems that there were some difficulties in bureaucratic circles in comprehending and also undertaking such structural changes. Therefore, a lack of enthusiasm was noticed in some actors in the former Libyan government when it came to implementing the changes and economic reforms. This law was issued in January 2010 and provided for the establishment of the Council of Competition, which can be considered a prerequisite for effectively enforcing the law (as explained in Chapter 3). However, as of late 2012, the former regime but also the new government have not established this Council, and have not issued the relevant regulations intended to help implement the competition law and the related changes. This is despite the fact that the new government expressed its commitment to carry out the provisions of this law.

In concluding, the difficulties regarding the issue of competition law could be described as delays in issuance of the law, and also delays in the establishment of the competition council and issuance of the regulations required to activate the law.

7.4 DEVELOPING THE LEGAL FRAMEWORK FOR THE EFFICIENT CORPORATE GOVERNANCE STRUCTURE

The recent financial crisis has highlighted the importance of corporate governance, as it has been articulated by various circles that the shortcomings in corporate governance structure are also to blame for financial failures. For such an accusation to come from the Western world is rather significant, as it has always been considered that legal and regulative dimensions of corporate governance are well established in the West. This highlights the importance of further and additional concerns for the developing countries such as Libya in developing the infrastructure for corporate governance. In addition, since privatisation can also lead to the development of corporate sector, it is essential that an efficient corporate governance structure should be prepared for successful accomplishment of privatisation process.

Creating the legal framework for an efficient corporate governance structure is one of the main conditions for improving a company's financial performance (OECD, 2004). Moreover, it is a key factor in the success of privatisation in terms of improving the performance and efficiency of the privatised companies, thereby enhancing economic efficiency (Dyck, 2001; Coffee, 2001; Johnson and Shleifer, 2004).

Chapter 3 discussed in detail the importance of corporate governance structure and its relationship with privatisation, especially in developing and transitional countries that depended for a long time on public sector companies and marginalised private investments and the role of the private sector.

It should be noted that there are many methods and models for corporate governance, as mentioned in Chapter 3. However, there is a set of common elements in these methods. The most important of these elements for meeting the international principles and standards of corporate governance were developed by the Organisation for Economic Cooperation and Development (OECD) in 1999 and amended in 2004, taking advantage of the many contributions and experiences of the member countries and international financial institutions such as the International Monetary Fund (IMF),

the World Bank and others. These principles cover five key issues: rights of shareholders, the equitable treatment of shareholders, the role of stakeholders, disclosure and transparency, and responsibilities of the board. By definition, as can be seen, these can only be implemented in and are relevant to market based economy.

7.4.1 Corporate Governance in Libyan Legislation

Before discussing and assessing the Libyan commercial legislation in terms of coverage of the most important principles of governance, it is first necessary to address the development of the legislation or the Libyan commercial law.

Commercial Law in Libya was issued in 1953, and some of its provisions were then amended through the issuance of certain laws such as Law No. 65 in 1970 on some provisions related to traders and trading companies, Law No. 9 in 1992 on engaging in economic activities, and Law No. 21 in 2001 on certain provisions of the practice of economic activity, which was amended by Law No. 1 of 2004. It is worth mentioning that, although these Laws amended certain provisions, the Commercial Code which was issued in 1953 continued in force until the issuance of a new Commercial Law No. 23 in 2010. However, this new law has not been activated yet even under the post-revolutionary government, since the government has not issued its executive regulations. Therefore, this section discusses and assesses the old law of 1953 first, as it is still in effect due to non-activation of the new Commercial Law; the discussion clarifies any additions or amendments made by the new law in regard to the structure of corporate governance.

With respect to corporate governance, it can be said that the Libyan Commercial Law included many provisions that would cover many of the important principles of the corporate governance structure, particularly with regard to the basic rights of shareholders, the equitable treatment of shareholders, and organising and clarifying the responsibilities of the board. However, the old Commercial Law contains a number of shortcomings, especially with respect to the issue of transparency and disclosure. In this context, it should be noted that the Capital Market Law No 11 of 2010 addresses these shortcomings and includes provisions necessitating high-quality transparency and disclosure by companies listed in the stock market in Libya.

Regarding the basic rights of shareholders and equitable treatment of shareholders, many Articles in the Libyan Commercial Law of 1953 emphasize these rights, which can be listed and discussed as follows:

Article No 522 stipulates that all shareholders registered in the records of the company, or who have deposited their shares with a company or a bank approved by the company, have the right to attend the general shareholders' meetings. Moreover, Article 524 provides that the shareholders have the right to assign others to attend meetings on their behalf, provided that the assignment is evidenced in writing. Furthermore, Article No. 503 provides that each share entitles the holder to the right to vote. Therefore, it seems clear that the Commercial Law guarantees the rights of shareholders to attend and vote at general shareholders' meetings according to the shares they own.

Article 516 provides that the shareholders have the right, through the regular general shareholders' meetings, to discuss all the financial and administrative issues, election and appointment of the board, auditors and the monitoring committee, determining the rewards of the board and the supervisory committee, and all matters relating to the management of the company as introduced by the board, as well as special matters and the responsibilities of the board and the monitoring committee. In addition, Article 517 states that shareholders have the right to discuss many of the core issues at irregular general meetings. These include any amendments to the statutes, increasing or decreasing the capital, and other significant issues.

Article 518 provides that the board must call the general shareholders' meeting by announcement in a daily newspaper, including details related to the date, time, place, and agenda of the meeting, and must also post the announcement at least ten days before the date specified for the meeting. Therefore, this procedure ensures that all shareholders can prepare themselves in advance with the prior information about the meeting and topics for discussion, to help make the right decisions at the meeting.

Article 519 provides that the board of directors must call for an irregular general meeting immediately when requested to do so by shareholders representing 20% of the capital of the company. If the board or monitoring committee does not call such a meeting, the president of the court should issue an order to hold the general meeting,

and can even stipulate the person who should chair the meeting. Thus, it seems clear that this Article gives a minority of shareholders the right to call irregular general meetings, and the law guarantees that the court will enforce this right in the event of delay or failure by the board or monitoring committee.

It is clear, therefore, that the Libyan Commercial Law, issued in 1953, states the basic rights of shareholders in many of its Articles, which can be considered an important part of the corporate governance structure. These rights include the right of shareholders to attend general assemblies, discuss all important financial and administrative matters, ratify financial statements, and elect the board of directors and the monitoring committee. Moreover, many of the Articles of this Law stipulate equal treatment of shareholders in terms of the equal rights of participation and voting in the general shareholders' meetings, as well as the right of the minority to call for irregular general meetings, and their right to resort to the court to impose them if necessary.

As mentioned above, in 2010, the Libyan Legislative Authority issued a new Commercial Law, as mentioned above. However, this Law has not been activated yet, since the government has not issued its executive regulations. When analysing the texts of the Articles of this Law, it seems clear that the Law confirms the same rights contained in the Articles of the old Commercial Law, with the addition of clear improvements on some of the basic rights of shareholders, which can be clarified as follows:

Article 154 of the new law provides greater flexibility for the shareholders with respect to their right to obtain sufficient information in a timely manner on issues under discussion at the general shareholders' meetings. This Article stipulates that the board of directors must announce the meeting at least 15 days in advance instead of 10 days as stated in the Law of 1953. Additionally, this Article added electronic communication means along with the daily newspapers to announce the time, date, place and agenda of the meetings. Moreover, it stipulates that a number of shareholders representing 10% of the capital of the company have the right to add any issues to the agenda, provided that the proposal is submitted to the board at least five days before the meeting date, and that these issues must be discussed in the meeting if approved by a majority of shareholders present at that meeting. Furthermore, the new

Commercial Law, through Article 155, provides greater flexibility for a minority of shareholders since it stipulates that a minority of shareholders representing 10% of the company's capital have the right to call for irregular general shareholders' meetings, as opposed to 20 % in the old Commercial Law.

In sum, the discussion so far indicates that the Libyan Commercial Law issued in 1953 guarantees many of the basic rights of shareholders as well as equal treatment of all shareholders, including the assurance of minority rights. Then, in 2010, the legislative authorities issued a new Commercial Law, which confirmed these rights with the addition of some significant improvements to the basic rights of shareholders.

Regarding the board of directors and its responsibilities, which is one of the key principles of corporate governance structure to ensure the quality and integrity of corporate management, the Libyan Commercial Law stipulates that the company's management should be handled by the board of directors that was appointed by the shareholders through the general meetings; also, the shareholders should appoint a body called the monitoring committee to observe and monitor the company's business and the actions of managers and the board of directors.

The Libyan Commercial Law issued in 1953 states that the board has the right to take all decisions and arrangements necessary to achieve the company's objectives except for decisions that lead to actions involving more than half of the company's assets; such decisions must be taken in the general shareholders' meeting. The Law also regulates the mechanism for the appointment and work of the board; it states that members of the board are not allowed to engage in any activity on their own behalf or on the account of others that is contrary to the interests of the company, except with the permission of the shareholders in the general meeting. In addition, if any member, in a particular process, has a special interest for himself or on account of others that is contrary to the interest of the company, he must inform the other members of the board and the monitoring committee, and must refrain from participating or voting in that process. In the case of violation of this rule, the offending member shall be responsible for any losses that the company may incur as a result of the completion of that process.

Furthermore, the Libyan Commercial Law stipulates that the shareholders, through the general shareholders meeting, must appoint a monitoring committee consisting of five people. This committee is responsible for many tasks such as controlling and monitoring the company's management, ensuring that the company progresses in a lawful manner, ensuring the legitimacy of the memorandum of association, and making sure that the financial statements and profit and loss accounts match the results recorded in the accounting records of the company. This committee must also review the financial assets of the company at least every three months. It should be noted that the Law stipulates that members of the monitoring committee, even individually, have the right to carry out inspections and investigations, and must have access to necessary information about the company's business.

The Libyan Commercial Law also regulates the working mechanism of the monitoring committee, which states that the monitoring committee must meet once every three months at least, and attend the board of directors' and general meetings, with the possibility of attending the meetings of the executive management. Moreover, the Law provides that the monitoring committee must pay attention to any complaint by any shareholder, and must refer to this complaint in its report prepared for the general shareholders' meeting. If the complaint is submitted by a number of shareholders representing 5% of the total capital of the company, the monitoring committee has to urgently investigate the subject of the complaint and report the results of the investigation and proposed solutions to the general shareholders' meeting. In the event that the complaint is serious and requires fast processing, the monitoring committee must call for a general shareholders' meeting.

As the presented aspects of the Libyan Commercial Law indicate, it includes many Articles that regulate the mechanism of assignment and the work of the board of directors of the company, as well as the monitoring committee that will follow up business and assets, and the actions of the board and managers, to ensure the quality of performance and management of the company.

It is worth mentioning that the new Commercial Law, issued in 2010, stressed the same rights, duties, work mechanism and selection of the board and monitoring committee, with the addition of some important Articles that address any

shortcomings in the old Law: Article 183 of the new Law stipulates that the board must submit an annual report to shareholders at least 7 days prior to the general meeting. This report must include all the data about amounts and advantages received by the head and members of the board during the financial year.

Moreover, the new Commercial Law includes new Articles to improve the quality of the monitoring by setting conditions for the selection of the monitoring committee; it states that at least two members of the committee must be highly qualified in accounting and law. In addition, the new Law stresses the independence of the monitoring committee; Article 197 stipulates that a person appointed to a monitoring committee must not be related by blood or marriage to the president or any member of the board, or to general managers of the company. Moreover, the head or member of the monitoring committee of a company must not be appointed to the board of directors of that company until at least three years after leaving the monitoring committee. Therefore, it seems clear that the new Commercial Law has added some important Articles that will improve the ability of the monitoring committee to exercise its tasks independently and objectively.

Concerning the principle of disclosure and transparency, the Libyan Commercial Law included many materials in this regard. In addition, the legislative authorities issued Law 11, in 2010, on the capital market; this included several important Articles to ensure high-quality disclosure and transparency, which is one of the important principles in corporate governance structure.

It should be noted here that the Law of 1953 emphasised the need to disclose all financial and administrative issues at general shareholders' meetings, and also gave shareholders the right to ratify the balance sheet and final accounts, which must be prepared properly in accordance with accounting standards. In addition, the new Commercial Law added a new Article, which stipulates that the board of directors must submit an annual report to shareholders at least 7 days prior to the general meeting. This report must include all data and details on amounts received by the board of directors, be they salaries, bonuses, or shares of profits of the company, as well as all benefits or advantages taken during the past financial year, such as housing, cars, or others.

In supporting all these, the legislative authorities issued the Capital Market Law No 11 in 2010, which includes many Articles that will ensure a high quality of disclosure and transparency in listed companies in the stock market in Libya. It should be noted that this Law stresses that all joint-stock companies whose capital exceeds LD 250,000 must be listed on the Libyan Stock Market, and they must obey all regulations governing the stock market, including listing and transparency regulations. Article No. 23 of the Capital Market Law stipulates that all companies listed on the Libyan Stock Market must submit reports quarterly, half-annually and annually including information on the overall activity and financial data that disclose the financial position; they must also publish a summary of these reports in two newspapers, at least one of them in the Arabic language. In addition, it stipulates that all companies must prepare balance sheets and financial statements in accordance with the accounting and auditing standards prescribed by the regulations of this Law. Furthermore, Article 78 of the Capital Market Law stresses that all listed companies must disclose immediately to the stock market any unforeseen circumstances affecting their activities or financial positions; in some necessary cases this information must be published in a daily newspaper. If the company does not respond, the stock market will publish the information about the emergency circumstances in the appropriate media, at the expense of that company. Therefore, it seems clear that the Capital Market Law will ensure high-quality disclosure and transparency as well as equal access to necessary and important information that may affect the company's activity and, hence, influence investment decisions of the shareholders and all stakeholders such as creditors, employees and potential investors.

In summary, as the discussion so far shows the Libyan Commercial Law includes a number of Articles that cover the most important principles of corporate governance structure, which is considered one of the main conditions for improving the performance and management of joint-stock companies, encouraging the private investors, thereby achieving the success of the transition to the private sector and the desired results of this transformation. As mentioned above, the Libyan Commercial Law stressed the basic rights and equal treatment of shareholders, as well as organising and defining the responsibilities of the board of directors and the monitoring committee. In addition, several Articles included in the Commercial Law

cover the necessary aspects of the issue of disclosure and transparency in business transactions. It should be noted also that the new Commercial Law issued in 2010 added many Articles that will give more flexibility to shareholders, as well as improving the quality of management and monitoring in joint-stock companies. Furthermore, the Capital Market Law, issued in 2010, included a number of Articles that are supposed to guarantee disclosure and transparency of the activities and operations of joint-stock companies listed in the stock market, which builds the confidence among shareholders and potential investors in the private companies.

As regards to the stakeholder and its description and roles, the laws and regulations did not provide any provision regarding the definition of stakeholders, as the emphasis is given to shareholders. This implies that the old as well as the new Libyan law comprehended corporate governance issues through Anglo-Saxon model, which only recognise the shareholders interest as part of corporate governance structure. This is considered as more market oriented than the stakeholder corporate governance structure proposed by the European model.

It is possible, however, to argue that the legislative authorities were late in issuing the new laws. While these laws were issued in 2010, they are still not in force due to the delay in issuance of executive regulations. This delay is a clear contradiction of the efforts of the government, since the 1990s, to encourage the private investors and the establishment of joint-stock companies through the issuance of many related regulations and laws. Therefore, it is possible to say that speeding up the activation of these laws is now an urgent issue with the objective of building a legal structure in line with the market economy, and also building an effective structure of corporate governance that will help to encourage investors and protect the rights of shareholders and stakeholders, as well as providing appropriate conditions to improve the efficiency and performance of private companies.

7.5 Conclusion

This chapter began by discussing the issue of protection of private property in accordance with the constitutional provisions in Libya. It concluded that the constitutional provisions in force until 2011 stressed that private property is protected and inviolable, and may not be taken away except in accordance with the law and

with fair compensation. However, private property as stipulated in the constitutional documents must not be exploitative. In other words, it must have resulted from the effort of the owner, with no exploitation of the efforts and needs of others. As a result of this condition, which seems socialist in nature, many laws and regulations were issued to restrict private property in Libya, leading to the nationalisation and confiscation of property of numerous citizens and foreigners, hence adversely affecting the confidence of the private investors, both foreign and domestic, and their ability and willingness to contribute to economic life.

This chapter thus concluded that the issuance of laws providing for protection of private property could be a positive step towards encouraging the private investment and stimulating the private sector. However, it might be insufficient in the presence of the constitutional provisions that restrict private property. Therefore, the issuance of a consolidated constitution that protects private property could be an effective solution to remove any ambiguity in restoring private sector confidence in Libya. In this context, as mentioned in this chapter, the Libyan authorities, through the adoption of economic reform policies in 2003, attempted to issue a consolidated constitution guaranteeing all rights of citizens. However, the resistance of certain government actors, who still adhered to the socialist ideology, had hindered the issuance of this constitution until 2011. In August 2011, following the revolution that toppled the regime of Colonel Muammar Gaddafi, the Transitional National Council issued a new constitutional proclamation promising that the new Libyan constitution would be issued in the next few months. Thus, this might be an appropriate time to ensure that private property is confirmed and constitutionalised with the objective of clarifying the parameters of the economic system which will rely on the private investments and market mechanisms, especially after the change in the political system, which is diametrically opposed to socialist ideas but rather aims at transforming and reforming Libyan political, business and social environment. However, the new regime has so far not been able to bring out a new constitution and therefore it is not possible to comment on the position of the new regime on such essential issues.

Moreover, this chapter discussed the subject of the legitimacy of the privatisation process in Libya. It was concluded that Libyan authorities issued a variety of legislation from the 1990s onwards that may have served as a legal basis for the

privatisation of SOEs. However, the constitutional provisions in force until 2011 stipulated that the economic system in Libya is a socialist system. Accordingly, this system is incompatible with privatisation as a means of shifting towards a market economy. Thus, this chapter concluded that developing a new constitution containing the foundational base of a new economic system, which relies on the private sector and the free market mechanism is an essential requirement to give legitimacy to the process of privatisation and the transition to a market economy in aiming at an efficient capitalist economy.

Regarding the Competition Law in Libya, this chapter concluded that the legislative authorities delayed issuing a law protecting competition in the Libyan market even though the government, from the 1990s onwards, started to privatise SOEs as well as issuing several laws that encouraged the private investors to contribute more to economic life. However, until 2010, the relevant authorities had not issued any competition law aimed at preventing any monopolistic actions from occurring in the private sector that negatively affect the consumer welfare, ability and willing of private investors to fully function in an effective manner, and the efficiency of private companies.

As mentioned earlier, in 2010 the Libyan authorities issued a new Commercial Law, which included many Articles organising the issue of competition and the prevention of monopolistic actions in the Libyan market. However, it seems that there are some difficulties in the implementation phase, which could be due to bureaucracy or a lack of enthusiasm in certain actors in the former Libyan government for implementing the changes and economic reforms. Although this law was issued in January 2010, the government had not issued the executive regulations, neither had it established the competition council identified in the law.

Concerning the legal framework of the efficient corporate governance structure, this chapter concluded that the legislative authorities in Libya issued several laws that covered most of the key principles of the structure of corporate governance. These laws include the new Commercial Law, issued in 2010, which confirmed the principles contained in the old Commercial Law with the addition of some required modifications, as well as the Capital Market Law, which includes many Articles that

ensure high-quality disclosure and transparency in Libyan companies. However, it can be argued that the legislative authorities were late in issuing these laws; as they were issued only in 2010 and are still not in force due to the delay in the issuance of executive regulations. Thus, this chapter concluded that speeding up the activation of these laws is urgent to build a legal structure in line with the economic transformation, and also to build an effective structure of corporate governance that will help to encourage investors and protect the rights of shareholders and stakeholders, as well as providing an appropriate investment environment to improve the efficiency and performance of private companies.

CHAPTER 8

EVALUATING THE PRIVATISATION PROCESS AND THE CONDITIONS FOR ITS EFFICIENT IMPLEMENTATION IN LIBYA: INTERVIEW ANALYSIS OF THE PAST AND FUTURE PERFORMANCE OF THE ECONOMY

8.1 INTRODUCTION

This chapter aims to explore and analyse the process of privatisation and the transition to a market economy in Libya through the opinions and perceptions of specialists and stakeholders in this area through a structured interview schedule.

The interviews for this study were conducted in the post-revolution period during January and February 2012 with the objective of locating the perceptions of various stakeholders on the privatisation process in the time of the previous regime. It is expected that the interviews also may highlight the economic expectation and particularly the expectations on the role of state in the economy, while the constitutional nature of Libya is being discussed.

The research methodology process aspect of the analysis presented in this chapter is described in Chapter 1; but it should suffice to state that the primary data collected by interviewing fourteen stakeholders in Libya were analysed through coding analysis.

Interviews included a series of questions regarding several important issues related to privatisation, which are analysed in this chapter. These issues include the participants' opinions about the nature of the economic system during the former regime, and the previous government's commitment to providing an appropriate economic, financial, legal/regulative environment for successful implementation of privatisation and economic transformation policies in Libya. In addition, this chapter analyses the participants' expectations about the orientations of the Libyan economy after the political change that occurred in Libya in 2011. Thus, the analysis and discussion

provided in this chapter helps to give further meaning to the analysis and results so far established in chapters 4, 5, 6 and 7.

8.2 PROFILING THE PARTICIPANTS

In collecting the primary data, a number of individuals were approached for interview purposes. Table 8.1 thus provides the details of the interviewees including their names and affiliations.

Table 8.1: Names, Positions, Qualifications, and Institutional Affiliations of Interviewees

No	Interviewee's name	Position / Qualification	Institution
1	Naser Milad Almarfy	Assistant Professor of Economics	Tripoli University
2	Ali Abdelatti El Ferjani	Professor of Economics	Tripoli University
3	Amir Fitouri Elmegeri	Professor of Economics	Tripoli University / Academy of Graduate Studies
4	Frhat Saleh Shernanna	Professor of Economics	Tripoli University / Academy of Graduate Studies
5	Salem Ahmed El Ferjani	Lecturer in Banking and Finance	Al-Mergeb University
6	Mustafa Mohammed Saleh	Head of Auditing Department	Sahara Bank
7	Nouri Abdulsalam Brion	Former economic adviser/ Professor of Finance	Central Bank of Libya/ Academy of Graduate Studies
8	Khaled Mansour	Head of Department of Companies' Performance Assessment	Agency of Privatization and Investment
9	Mohammed M'hamed Sreba	Head of the Establishment Department	Agency of Privatization and Investment
10	AL Hadi Hassan Abdo	Head of The Evaluation Department	Agency of Privatization and Investment
11	Abdullah Moftah Tapoli	Head of Applications and Registration Department	Agency of Privatization and Investment
12	Ahmed Karod	General Manager	Libyan Stock Market
13	Abdel Moneim Mohammed Abohadi	Head of Monitoring and Risk Management Department	Libyan Stock Market
14	Naima Mohammed Toumi	Head of Accounts Department	Libyan Stock Market

As can be seen in Table 8.1, interviews conducted for this study targeted a variety of specialists and stakeholders of the privatisation process and economic policies in

Libya. This combination included 5 academics specialising in economics, banking and finances who work for different educational institutions in Libya. Secondly, senior officials in the financial and banking sectors and government agencies related to privatisation in Libya were interviewed. To obtain the perceptions of the private sector, two bankers working in the Libyan banking sector were also interviewed. Importantly, four senior staff of the Privatisation and Investment Agency and three senior officials of the Libyan capital market including the general manager of the Libyan Stock Market were interviewed. This evidences that the representatives of the major stakeholders were included in the interview process.

8.3 PERCEPTIONS ON THE ECONOMIC SYSTEM AND THE REFORM POLICIES DURING THE FORMER REGIME

The second section of the interview schedule includes questions 2, 3 and 4, which aims to explore the opinions of interviewees about the economic system during the previous regime, and to examine whether the Libyan attempt to shift to a market economy and liberalisation of the economy was a genuine policy stemming from the conviction that the transformation was necessary, or was simply paying lip service to international pressure. Moreover, this section aims to explore the rationale and need for adopting market economy policies and the privatisation programme in Libya through the opinions of the participants.

In the second question, the interviewees were sought to express their views about the nature of the Libyan economy during the former regime. Since the Libyan economy experienced many changes during the former regime, the answers of participants to this question may help to explore whether the former regime succeeded in establishing a stable system for the economy that rendered it consistent with the policies adopted recently, including the privatisation of SOEs, and encouraging the private sector to play a greater role in economic development. The analysis of the answers given to this question is presented in Table 8.2.

Table 8.2: Focused Coding for Question 2 (Views on the nature of the Libyan economy during the former regime)

Question 2: Could you please state your opinion on the nature of the economy during former regime? How would you classify the economic regime in terms of whether it was socialist, capitalist or mixed economy?	
Focused Coding	
1	It could be classified as a mixed economy
2	An unclear and unstable regime
3	A socialist in spite of attempts to involve the private sector
Theme	It is mixed economy, despite the weakness of the private sector compared to the state's role in the economy, taking into account the problem of instability in the legal and regulatory environment that affected the stability and clarity of the economic regime. However, due to not having a clear-cut definition of the economic institutions, it could also be considered as socialist or even no system at all.

Table 8.2 shows the participants' views about the nature of the Libyan economy during the previous regime, which can be classified into three major themes: (i) the Libyan economy could be classified as a mixed economy; (ii) it was an unclear and unstable regime; and (iii) it was a socialist economy in spite of attempts to involve the private sector. These themes lead to a general understanding that the economic system in Libya, during the former regime's control, can be classified as a mixed economic system, despite in its later years aim was to shift to a market economy or the capitalist system. In addition, there had been ambiguity and confusion in the decision-making process, resulting in an unclear picture about the nature of the Libyan economy, especially in the last few decades. However, some of the interviewees likened it to a socialist economy despite the creation of certain private sector entities, while others claimed that the economy did not have any definition, as it was ambiguous in its character.

A more detailed account of the contents of the three established codings and the respective answer for this categories can be found in Tables 8.2.1, 8.2.2 and 8.2.3.

Table 8.2.1, as can be seen, shows the answers of 6 participants who argued that the economic system in Libya, during the former regime, was a mixed one, especially in the last two decades.

Table 8.2.1: Focused Coding Number 1 for Question 1 (Mixed Economy)

The Libyan economy could be classified as a mixed economy	
Interviewee 1	Adopting some liberal policies in the last decade has turned the Libyan economy from a socialist to a mixed regime
Interviewee 2	Adopting some liberal policies in the last decade has turned the Libyan economy from a socialist to a mixed regime
Interviewee 3	Complete control of the state in some sectors, strong competition between private sector companies in other sectors
Interviewee 5	The economy combines public and private ownership, limited and conditional freedom for the private sector, a central planning for the economy
Interviewee 7	Significant growth of the private sector, state control over resources, a central planning for the economy
Interviewee 10	Privatisation of the public sector through certain methods influenced by socialist thought

As can be seen, those participants explained the reasons and justifications for this answer: Interviewee 1, for example, stated that the Libyan economy was socialist for decades; however the adoption of many liberal policies in the last decade turned it into a mixed system. Similarly, interviewee 2 indicated that, from the 1990s, the Libyan economy began to shift from a socialist to a mixed regime, who also argued that the state allowed the private sector to engage in some small and medium-sized economic projects, although it is still dominant in most of the major sectors. In the same context, interviewee 3 stressed that the Libyan economy is mixed; some sectors were completely monopolised by the state, while there was a strong competition between private sector companies in other sectors.

Interviewee 5 stated that the Libyan economy is mixed, as it combines public and private ownership. He also indicated that, although the government had been given some limited and often conditional freedom to the private sector, it continued to adopt the approach of comprehensive central planning for economic development. Similarly, interviewee 7 expressed that, although there had been a marked increase in the participation of the private sector, the state still planned the economy because it owns and controls the country's resources.

Interviewee 10, however, justified his answer from another viewpoint. He argued that the Libyan economy was a mixed economy during the former regime because it recently adopted policies designed to shift to the market economy or a capitalist regime. However, socialist ideas continued to influence some policy-makers in Libya.

He points out that even the privatisation programme, in its early phase, has been affected by the ideas of socialism and social goals at the expense of achieving economic objectives; the state adopted the goal of expanding the ownership base by selecting certain methods of privatisation, such as management and employee buyouts, and granting free shares of SOEs to the general public.

Table 8.2.2: Focused Coding Number 2 for Question 1 (Unclear and unstable regime)

The Libyan economy was an unclear and unstable regime	
Interviewee 8	Continuous changes in the goals and aspirations, there are no studies to support changes
Interviewee 9	Conflicting and instable decisions and policies, economic policies constantly affected by political factors
Interviewee 11	Lack of vision and clear strategy
Interviewee 13	Incompatible legislations, conflicting and instable decisions and policies
Interviewee 14	Incompatible legislations, conflicting and instable decisions and policies

In detailing the focused coding 2 that the Libyan economy was characterised as unclear and unstable in the Qaddafi era, Table 8.2.2 shows that 5 participants stated that the economic system in Libya, under the previous regime, was an unclear and unstable system for several reasons, including changes in goals and aspirations during the former regime, incompatible legislations, and the continuous changes in policies and decisions taken by the government.

Interviewee 8 stated that the economic system in Libya had seen many changes in terms of goals and aspirations, but most of these changes were not based on scientific studies and research; which generated great ambiguity and confusion in the process of developing the relevant policies. Similarly, interviewee 9 stated that the process of developing economic policies in Libya was unclear and usually not based on strategic studies; which led to conflict and instability in the decision-making process. He also argued that political factors, be they internal or external, had much direct impact on the process of devising economic policies and related decisions. In the same context, interviewee 11 stated that the economic system in Libya was unclear due to the lack of a clear vision and solid strategy.

Interviewees 13 and 14 added that inconsistencies in the laws and the lack of a stable legislative base created an ambiguous picture about the nature of the economic system in Libya during the former regime.

Table 8.2.3: Focused Coding Number 3 for Question 1 (A socialist regime)

The Libyan economy could be classified as socialist in spite of attempts to involve the private sector	
Interviewee 4	State control over resources, state monopoly of key sectors, central planning for the economy, modest contribution by the private sector
Interviewee 6	State monopoly of key sectors, modest contribution by the private sector, social goals and socialist ideas in the implementation of privatisation

Table 8.2.3 shows the responses of two participants for the focused coding 3 that the Libyan economy could be characterised as a socialist economy during the former regime, despite attempts to involve the private sector in some sectors. As can be seen in Table 8.2.3, interviewee 4 stated that the Libyan economy could be classified as a socialist economy despite the presence of the private sector, because the state controls most economic activities and employs the majority of the labour force, whether in administrative institutions or in the public companies working in most important economic activities. He also indicated that the state controls all the economic resources, which are operated in a socialist manner; the state pursued a comprehensive central planning approach while the private sector only participated in some small and medium-sized projects. Accordingly, he stated that the Libyan economy could not be classified as a capitalist economy, or even a mixed regime.

Interviewee 6 believed that the state controlled the major sectors of the Libyan economy; furthermore, the modest contribution of the private sector is not based on clear standards and strategies. He also stated that the economic policies adopted recently seem like policies for a transformation to a market economy. However, they often aimed at achieving social goals, which are socialist in nature. He indicated that privatisation in Libya, for instance, aimed to expand the ownership base, thus causing the relevant authorities, especially in the early stages of privatisation, to choose certain methods to achieve this goal at the expense of the economic and financial goals of the programme. Thus, he stated that the economic system in Libya was socialist in character despite the adoption of certain economic policies to move towards a market economy.

Also in this section, question 3 was developed to examine whether the Libyan attempt to shift to a market economy and liberalisation of the economy was a genuine policy stemming from the conviction that the transformation was necessary or was merely paying lip service to international pressure. The conviction of the government is very important as political will and support is one of the most essential success factors for economic transition in general and the implementation of the privatisation programme in particular. The interview data for this question are analysed and presented in Table 8.3.

Table 8.3: Focused Coding for Question 3 (Views on the Libyan Attempt to Achieve a Market Economy and Economic Liberalisation)

Question 3: Do you think the Libyan attempt at a market economy and economic liberalisation was a genuine policy or was it lip service to the international pressure?	
Focused Coding	
1	The Libyan attempt at the market economy and economic liberalisation was a genuine policy and the result of internal reasons
2	The Libyan attempt at the market economy and economic liberalisation was a genuine policy, although international pressure may be one of the reasons for adopting this policy
3	The Libyan attempt at market economy and economic liberalisation was a lip service to the international and domestic pressure
Theme	The former government's attempt to shift to a market economy can be considered as genuine policy, resulting from several internal reasons that related to the failure of the public sector and negative consequences for the dominance of the state, although international pressure may be one of the reasons that motivated the adoption of the liberalisation policies. However, the presence of international pressure and the lack of clear policies by the government could be a persuasive reason to generate considerable doubt about the willingness and seriousness of the government to transform the economy

As can be seen in Table 8.3, the participants' views about the Libyan attempt at achieving a market economy and economic liberalisation can be classified into three major themes: (i) the Libyan attempt to achieve a market economy and economic liberalisation was a genuine policy and the result of internal factors; (ii) it was a genuine policy, although international pressure may have been one of the reasons for adopting it; and (iii) the Libyan attempt at achieving a market economy and economic liberalisation was merely paying lip service to the international and domestic pressure.

These themes lead to a general understanding that the former government's attempt to shift to a market economy can be considered as a genuine policy that resulted from

several internal factors related to the failure of the public sector and negative consequences of the dominance of the state, although international pressure may be one of the reasons that motivated the adoption of the liberalisation policies. However, the presence of international pressure and the lack of clear policies by the government could be a persuasive reason to doubt the willingness and seriousness of the government to transform the economy.

In order to provide a detailed understanding of the three established codings, the focused coding results are presented in Tables 8.3.1, 8.3.2 and 8.3.3.

Table 8.3.1: Focused Coding Number 1 for Question 3

The Libyan attempt at a market economy and economic liberalisation was a genuine policy and result of internal factors	
Interviewee 4	Failure of the public sector, accumulated losses of SOEs, burden on the public budget, privatising public companies, private sector involvement, procedures for creating an appropriate business environment
Interviewee 5	Failure of the public sector, adopting many reforms and liberal policies, although the implementation of these policies was lacking coordination and clarity
Interviewee 7	Failure of the public sector, accumulated losses of SOEs, burden on the public budget, conviction of the failure of socialist ideas, statements of the Libyan authorities for the need for change

Table 8.3.1 shows the answers of three participants who argued that the Libyan attempt to achieve a market economy and economic liberalisation was a genuine policy and the result of internal factors. Information gathered from the interviews explains the reasons and justifications for this answer provided by those participants. Interviewee 4, for example, asserted that the Libyan attempt to liberate the economy was a genuine policy to address many problems caused by the state's dominance and the expansion of the public sector in the Libyan economy. He explains that the most important reasons for the adoption of reform and economic liberalisation policies were the failure of the public sector in its performance of economic functions, and low productivity and accumulated losses in most SOEs, which caused the continuous general budget deficit due to the subsidies provided to these loss-making enterprises. Moreover, he indicated that many of the adopted reforms and policies prove the desire and conviction of the government to transform the economy and address the problems mentioned above. These policies and reforms include establishing the privatisation

agency, privatising numerous public companies and banks, and making many arrangements to create the proper environment for business such as issuing many necessary laws to encourage investment and private sector involvement in the economy, establishing the capital market, and various other reforms. Similarly, interviewee 7 stated that many internal reasons such as the failure of the public sector, losses of SOEs, public budget deficit, and the government's realisation that socialist ideas had failed were behind the adoption of liberal policies and the transition to the market economy. He indicated that the Libyan authorities, on more than one occasion, stated the need to adopt more liberal policies and recognised the necessity of encouraging the private sector to play a greater role in economic activity in order to address the serious problems produced by the public sector and state control of the economy.

Moreover, interviewee 5 stated that the former government's attempt was a genuine policy, and the failure of the public sector was the main reason for this policy. He indicated that the adoption of many reform policies proves the former government's conviction about the necessity of addressing shortcomings and problems caused by socialist policies. However, there were many complications in the implementation of these policies as a result of a lack of strategic studies and the lack of a clear vision and goals.

Table 8.3.2: Focused Coding Number 2 for Question 3

The Libyan attempt at a market economy and economic liberalisation was a genuine policy, although international pressure may have been one of the reasons for adopting this policy	
Interviewee 1	Failure of the public sector, financial and administrative corruption, accumulated losses of SOEs, burden on the public budget, international pressure, recommendations and prescriptions of international financial institutions
Interviewee 3	Failure of the public sector, conviction by the government of liberalising the economy , international pressure
Interviewee 9	Failure of the public sector, conviction by the government of liberalising the economy , international pressure

As can be seen in Table 8.3.2, the responses of three participants for the focused coding 2 argued that the Libyan attempt to achieve a market economy and economic liberalisation was a genuine policy, although international pressure may have been one of the reasons for adopting this policy.

As Table 8.3.2 depicts, interviewee 1 stated that the attempt to achieve a market economy and economic liberalisation was a genuine policy that was associated with two important aspects. The first is domestic, including the failure of the public sector, financial and administrative corruption, and accumulated losses of SOEs that imposed an extreme burden on the public budget. The second aspect was related to the international pressure, especially after the lifting of economic sanctions on Libya in the last decade when Libya was asked to change its policies to be able to re-engage economically with the international community. In addition, he stated that decision-makers in Libya were influenced by the liberal prescriptions and recommendations of international financial institutions such as the World Bank and the IMF to address the problems resulting from the state control over the economy.

Similarly, participants 3 and 9 argued that the attempt to achieve economic liberalisation was a result of the failure of the public sector and the conviction among decision-makers in Libya of the need to liberalise the economy from state control and address the economic and financial problems caused by this dominance. In addition, they state that international pressure might have been one of the reasons for the adoption of certain policies to address these problems.

Table 8.3.3: Focused Coding Number 3 for Question 3

The Libyan attempt at a market economy and economic liberalisation was lip service to the international and domestic pressure	
Interviewee 2	Socialist ideas continued to influence the decision-making process
Interviewee 6	International pressure, attempt to gain the public support
Interviewee 8	International pressure
Interviewee 10	International pressure, attempt to gain the public support
Interviewee 11	International pressure, absence of a clear strategy
Interviewee 13	International pressure, pressure by local businessmen

Table 8.3.3 shows the responses of six participants for the focused coding 3 that the Libyan attempt to achieve a market economy and economic liberalisation was merely paying lip service to the international and domestic pressure. Interviewee 2 stated that the economic policies adopted by the previous government to shift to a market economy were not real because the ideas of socialism still heavily affected the implementation of many reform policies including the privatisation programme;

furthermore, the private sector was only allowed to engage in certain sectors, and in limited forms.

Interviewee 8 stated that the former Libyan government resorted to adopting liberal policies only in response to international pressure in order to rebuild its economic relations with the Western countries, particularly after the lifting of international sanctions that were imposed in the 1990s. Thus, this was a means for the government of the time to gain the acceptance of the international economic and financial system.

Interviewees 6 and 10 argued that the adoption of liberal policies in Libya was a result of international pressure; it was also intended to gain the support and satisfaction of the public in Libya since some policies, such as the removal of import restrictions, could play a major role in the provision of essential commodities in the local market at appropriate prices and quality, especially after the failure of public sector enterprises in the provision of such goods to the Libyan citizens. Moreover, interviewee 13 stated that, in addition to the international pressure, there was pressure and demands from some local businessmen for the adoption of more liberal policies to create a suitable environment for the private sector in order to reap the benefits of the open market economy. Thus, in responding to this demand, the government opened up the economy to the private sector to a limited extent, allowing it to engage with and contribute to limited sectors and projects in the Libyan economy.

After establishing the motivation of the government to liberalise the economy, this section, in question 4, attempts to locate the rationale and need for adopting market economy policies and a privatisation programme in Libya through the opinions of the participants. The analysis based on the answers given to this question is presented in Table 8.4.

As can be seen in Table 8.4, the views of the participants can be classified into two major themes: (i) Libya needed a market economy and privatisation; and (ii) Libya needed a market economy and privatisation policies but there were many issues that had to be taken into account. These themes lead to a general understanding that Libya actually needed to shift to a market economy and privatisation of SOEs, especially after the failure of most public sector enterprises in achieving the desired goals, and the emergence of many problems caused by state control of economic activity.

However, there were many issues that had to be taken into account by the government to ensure the proper transition and minimise the negative effects of the liberalisation policies.

Table 8.4: Focused Coding for Question 4 (The Need for Adoption of Market Economy Policies and Privatisation Programme)

Question 4: Please comment whether you think that Libya needed a market economy and privatisation? Please relate your opinion to the performance of the public sector in Libya.	
Focused coding	
1	Libya needed market economy and privatisation
2	Libya needed market economy and privatisation policies; however, there were many issues that had to be taken into account
Theme	Libya actually needed to shift to a market economy and privatisation of SOEs, especially after the failure of the public sector and the dominance of the state over the economy. However, there were many issues that had to be taken into account by the government to ensure the proper transition, and to minimise the negative effects of such policies.

Further details and explanation of the focused codings categories for question 4 are presented in Tables 8.4.1, 8.4.2 and 8.4.3.

Table 8.4.1: Focused Coding Number 1 for Question 4

Libya needed market economy and privatisation	
Interviewee 2	Inefficiency of SOEs, public budget deficits
Interviewee 4	Inefficiency of SOEs, increasing the dependence on oil, poor quality of services and goods provided, disguised unemployment
Interviewee 5	Inefficiency of SOEs, public budget deficits, depletion of economic resources, financial and administrative corruption, monopoly, disguised unemployment
Interviewee 7	Inefficiency of SOEs, financial and administrative corruption
Interviewees 9 & 10	Inefficiency of SOEs, depletion of economic resources
Interviewee 11	Inefficiency of SOEs, weakness of the incentives system in the public sector
Interviewee 13	Failure of the socialist system in most socialist countries, inefficiency of SOEs
Interviewee 14	Inefficiency of SOEs, importance of engaging the private sector, privatisation experience around the world

Table 8.4.1 shows the responses of nine participants for the focused coding 1 that Libya needed a market economy and privatisation.

Interviewee 2 argued that Libya needed to develop new policies to address the problems of the inefficient public sector, which was dependent on subsidies provided

from the public treasury to cover accumulated losses, thus imposing a heavy burden on the state budget. In supporting this position, interviewee 4 states that the importance of adopting liberal policies and privatisation of SOEs stems from the necessity to address many serious issues in the Libyan economy, such as the inefficiency of public sector enterprises, low quality of services and goods provided by these institutions, the declining domestic production, vanishing non-oil exports, and increasingly disguised unemployment in both government departments and public companies. Similarly, interviewee 5 justified economic liberalisation policies as a consequence of inefficient SOEs, continued general budget deficit, the depletion of state resources, and other problems associated with the state dominance of the economy; for these reasons, privatisation and liberal policies were needed. Moreover, he explained that the state monopoly on most economic activities affected the competitive environment in the market, and hence impacted negatively on the quality of goods and services provided to citizens. In addition, he stated that financial and administrative corruption and political interference in the politics of public sector institutions caused many financial problems and increasingly disguised unemployment in the Libyan economy. In further substantiating this rationale, interviewee 7 stated by emphasising that the adoption of liberal reform policies was necessary to address the inefficiency of SOEs and to eliminate the problem of corruption in government institutions.

In a similar vein, interviewees 9 and 10 argued that the inefficiency of public sector enterprises and the depletion of the country's economic resources made the privatisation policy an essential and urgent issue. In addition, interviewee 11 stated that the weakness of the incentive system and indifference of workers in the public sector has led to poor performance and inefficiency of SOEs. Accordingly, he believed that the development of radical solutions including privatisation was essential.

Pointing to a systemic failure, interviewee 13 stated that the socialist system failed in most socialist countries and Libya was no exception. As result, the adoption of liberal policies and privatisation was necessary to address the problems caused by socialist ideas and state control of the economy.

Finally, interviewee 14 argued that the inefficiency of public sector enterprises resulted from the state monopoly in the market; therefore, privatisation and private sector involvement were necessary to promote competition and improve conditions for economic enterprises in Libya. He also indicated that the many successful privatisation experiences, in many transitional countries, could be a powerful incentive to adopt policies for a market economy and privatisation of the public sector.

As can be seen, the participants in this section provided rationale for the privatisation and economic liberalisation policies by, mainly, pointing to the failure of the Libyan economy in general and the public sector in particular.

Table 8.4.2: Focused Coding Number 2 for Question 4

Libya needed market economy and privatisation policies; however, there were many issues that had to be taken into account	
Interviewee 1	Necessity of privatisation of most SOEs, the need to keep the state in some sectors, considering the social effects
Interviewee 3	Necessity of privatisation of most SOEs, eliminating the administrative and financial corruption
Interviewee 6	Necessity of privatisation of most SOEs, developing a suitable mechanism for implementation, developing and improving the performance of SOEs before the change of ownership
Interviewee 8	Necessity of privatisation of most SOEs, developing a suitable mechanism for implementation

Table 8.4.2 shows the responses of six participants for the focused coding 2 that Libya needed a market economy and privatisation policies; however, there were many issues that had to be taken into account.

As can be seen, interviewee 1 stated that the privatisation of most public sector enterprises was an urgent need due to the weak performance and inefficiency of these enterprises, which led to many financial and economic problems in the Libyan economy. However, he suggested that the transition to a market economy should be done gradually as there were many issues, especially social concerns, which need to be taken into account. He argued that the withdrawal of the state entirely from economic activity usually caused negative effects for some groups in society. Accordingly, he believed that the state had to maintain its role, especially in those sectors that had not met the conditions of competition.

Interviewee 3 stated that the privatisation of most SOEs was considered necessary as a result of their inefficiency. However, he argued that the poor management in government departments and the financial and administrative corruption were the real problems; which must be addressed first so that they do not continue after the transformation and implementation of privatisation, when the consequences could be even worse.

Participants 6 and 8 also stated that the privatisation of most public sector companies was essential. However, they asserted that the mechanism of implementation is more important, as a quick privatisation without adoption of proper mechanisms and strategies will lead to the failure of privatisation, and the entire reform programme. In this context, interviewee 6 suggested that reforming and improving the performance of public sector companies before privatisation may be a more effective solution than the implementation of rapid privatisation.

8.4 ANALYSING THE PERCEPTIONS ON THE ATTEMPTS TO DEVELOP THE APPROPRIATE ENVIRONMENT FOR PRIVATISATION AND ADDRESS THE NEGATIVE IMPACTS IN LIBYA

The preceding section aims to locate the political and economic motivation and rationale for economic liberalisation and privatisation. As previously identified, it is essential that the business environment is conducive to such changes. Therefore, the third section of the interview schedule, which includes questions 5, 6, 7 and 8, aims to explore the views of the participants about the Libyan economic, financial, legal and regulative environment and its appropriateness for efficient implementation of privatisation and the transition to a market economy. In addition, this section aims to explore the views on the commitment of the former government to addressing the negative social effects that may arise from the adoption of privatisation and economic liberalisation policies. Moreover, this section presents the analysis on the participants' views on the performance of the previous government, in general, in implementing the privatisation process and economic transformation policies.

Being the first question of this section, Question 5 of the interview schedule aims to explore the views of the participants on the Libyan economic and financial environment. The analysis of the answers to this question is presented in Table 8.5.

Table 8.5: Focused Coding for Question 5 (Views on the Libyan Economic and Financial Environment)

Question 5: Do you think Libya has had the appropriate economic and financial environment for an efficient privatisation and transition to market economy? If not, would you state what the former government did to develop the economic and financial environment?	
Focused coding	
1	Libya has not had the appropriate economic and financial environment for an efficient privatisation and transition to market economy
2	Former Libyan government provided many of the basic conditions for creating an appropriate economic and financial environment
Theme	Libya has not had the appropriate economic and financial environment for an efficient privatisation and transition to market economy, although there were many arrangements and policies that have been taken lately in order to create this environment

As presented in Table 8.5, the views of the participants can be classified into two major themes: (i) Libya has not had the appropriate economic and financial environment for an efficient privatisation and transition to a market economy; and (ii) the former Libyan government provided many of the basic conditions for creating an appropriate economic and financial environment. These themes lead to a general understanding that Libya has not had the appropriate economic and financial environment for an efficient privatisation and transition to a market economy although the former regime implemented many arrangements and policies recently in order to create this environment.

A more detailed account of the contents of the established codings can be found in Tables 8.5.1 and 8.5.2.

Table 8.5.1 illustrates the answers of 10 participants who believed that Libya did not have the appropriate economic and financial environment for an efficient privatisation and transition to a market economy.

Table 8.5.1: Focused Coding Number 1 for Question 5

Libya did not have the appropriate economic and financial environment for an efficient privatisation and transition to a market economy	
Interviewee 1	Price liberalisation, privatisation of some SOEs, lack of an efficient and effective financial sector, weakness of the capital market, problems in financing the private sector
Interviewee 2	Problems in financing the private sector, state intervention in economic policies, ambiguity in monetary and fiscal policies
Interviewee 3	Mismanagement in government agencies, the continuous state intervention in economic policies, ambiguity in monetary and fiscal policies
Interviewee 6	The continuous state intervention in economic policies, ambiguity in monetary and fiscal policies, weakness of the capital market
Interviewee 7	Mismanagement in government agencies, problems in financing the private sector, administrative and financial corruption
Interviewee 8	Administrative and financial corruption
Interviewee 10	The continuous state intervention in economic policies
Interviewee 11	Administrative and financial corruption, ambiguity in monetary and fiscal policies
Interviewee 12	Ambiguity in monetary and fiscal policies
Interviewee 14	Mismanagement in government agencies, administrative and financial corruption

As can be seen, interviewee 1 stated that it is worth noting that the former government undertook some procedures to create the economic and financial environment for the market economy, including price liberalisation for many goods and services and privatisation of some SOEs. However, there are many problems and difficulties in the financial and economic environment, such as the lack of the necessary finance required for the growth and development of the private sector resulting from the weakness of the financial and banking sector in Libya and the weakness of the newly established stock market.

In supporting the position articulated by the previous interviewee, Interviewee 2 believed that Libya did not have the appropriate economic and financial environment for several reasons, including lack of funding sources sufficient to develop the private sector and the constant state intervention in all policies, thus causing ambiguity in monetary and fiscal policies in Libya. Similarly, participants 3, 7, 10 and 11 pointed out that the constant intervention by the political parties led to considerable confusion and conflict in the decision-making process and the development of related economic plans and policies, causing instability in the economic environment.

Participants 3, 8, 11 and 14 also stated that the widespread problem of financial and administrative corruption in government agencies is a major impediment creating a suitable environment for sound economic transformation.

Interviewee 6 also argued that the constant intervention by politicians in the decision-making and economic policy was a real problem preventing the creation of an appropriate business environment. He explained that the economic and administrative authorities were not able to make decisions and economic policies independently, since there were often powerful political actors involved in the process of economic decision-making. He also stated that the weakness of the Libyan stock market, the instability of its legal status, and the lack of a supervisory body charged with monitoring its activity could be described as considerable problems in the Libyan financial environment.

Table 8.5.2: Focused Coding Number 2 for Question 5

Former Libyan government provided many basic conditions for creating an appropriate economic and financial environment	
Interviewee 4	Establishing the stock market, reforming the banking sector, encouraging the private sector, price liberalisation of most goods and services, encouraging foreign investment
Interviewee 5	Removal of restrictions on foreign exchange, privatising commercial banks, establishing the stock market, removal of import restrictions

Table 8.5.2 shows the answers of participants who argued that the former Libyan government provided many of the basic conditions for creating an appropriate economic and financial environment, as they provided specific policies towards such an end.

In the same vein, interviewee 4 stated that it is difficult to assert that Libya provided an economic and financial environment suitable for privatisation and the transition to a market economy. On the other hand, he argued that it is possible to state that the former Libyan government took many important measures in order to create this environment. These measures included the reform of the financial and banking sector including privatising a number of commercial banks, allowing foreign partners into the Libyan banking market, promoting the establishment of private banks, and recently establishing the Libyan Stock Market. In addition, there were several

measures to tackle price liberalisation in the Libyan market, as well as measuring to encourage foreign and local investment.

Similarly, interviewee 5 stated that the former Libyan government adopted a number of measures and arrangements that were supposed to create an economic and financial environment appropriate for privatisation and the transition to a market economy. He clarified that these measures included the removal of restrictions on dealing in foreign currency, exchange rate unification, privatisation of commercial banks, removal of restrictions on imports, encouraging foreign investment, and establishing the Libyan Stock Market.

While economic and financial reform is essential for an efficient privatisation programme, the legal and regulative environment is the core for such a change as, without a proper legal and regulative environment, the market economy cannot operate efficiently. Question 6, therefore, aims to explore the views of the interviewees about the Libyan legal and regulative environment and its appropriateness for efficient implementation of privatisation and the transition to a market economy. The analysis of the answers to this question is presented in Table 8.6.

Table 8.6: Focused Coding for Question 6 (Views on the Libyan Legal and Regulative Environment)

Question 6: Do you think Libya has had the appropriate legal and regulative environment for an efficient privatisation and transition to a market economy? If not, would you state what the former government did to develop the economic and financial environment?	
Focused coding	
1	Libya has not had the appropriate legal and regulative environment for an efficient privatisation and transition to a market economy
2	Former Libyan government took many procedures and arrangements to create an appropriate legal and regulative environment
Theme	Libya has not had the appropriate economic and financial environment for an efficient privatisation and transition to a market economy. However, there were several arrangements taken by the former government and many laws issued by the legislative authorities in order to create this environment

As can be seen in Table 8.6, the views of the participants can be classified into two opposing themes: (i) Libya has not had the appropriate legal and regulative environment for an efficient privatisation and transition to a market economy; and (ii) the former Libyan government took many procedures and arrangements to create an

appropriate economic and financial environment. These themes lead to a general understanding that Libya has not had the appropriate economic and financial environment for an efficient privatisation and transition to a market economy. However, several arrangements were made by the former government and many laws were issued by the legislative authorities in order to create this environment.

Focused codings of Question 6 in more detail can be found in Tables 8.6.1 and 8.6.2.

Table 8.6.1: Focused Coding Number 1 for Question 6

Libya has not had the appropriate legal and regulative environment for an efficient privatisation and transition to a market economy	
Interviewee 1	Issuance of certain laws, privatisation resolutions, inactivated laws
Interviewee 2	Conflict of laws, constant intervention by the state, influence of socialist ideas
Interviewees 6 & 7 & 9 & 11	Issuance of certain laws, inactivated laws
Interviewee 8	Conflict of laws, instability of the legal environment
Interviewee 10	Issuance of certain laws, conflict of laws, political factors, instability of the legal environment
Interviewee 13	Issuance of certain laws, conflict of laws, undeveloped judicial institutions
Interviewee 14	The need to review the key legislation

Table 8.6.1 depicts the answers of 10 participants who argued that Libya did not have the appropriate legal and regulative environment for an efficient privatisation and transition to a market economy.

Interviewee 1 stated that the former Libyan government made a series of resolutions and issued a set of laws for the privatisation of many SOEs, as well as issuing a set of laws that were meant to promote and regulate private sector participation. However, many of these important laws issued just prior to revolution have not been activated. Similarly, participants 6, 7 and 9 pointed out that the relevant authorities did not issue regulations for the new laws, which caused the non-activation of these laws, thereby negatively affecting the creation of an appropriate legal environment for a market economy. They mention the delay in the activation of the new Commercial Law and the Capital Market Law, which were issued in 2010.

Participants 2 and 8 argued that the legal and regulative environment in Libya was characterised by instability and conflict in resolutions and laws. Interviewee 2 states

that the constant intervention by politicians in issuing, enforcing and amending laws, as well as the socialist ideas that had continued to affect the decision-making process, greatly affected the legal and regulative environment in Libya. Similarly, participants 8 and 10 stated that the influence of political factors and state intervention created much doubt and uncertainty about the legal and regulative environment as a result of the continuing abolition of the laws and decisions issued by the relevant authorities.

Interviewee 13 also stated that the previous Libyan government tried to create a legal and regulative environment suitable for a market economy by issuing a series of laws to encourage and regulate private sector activity; however, many of these laws have not been activated, and there was a conflict in many of the other laws because of the absence of a unified constitution that is supposed to regulate the economic activities and clarify the main features of the Libyan economy. He added that the judicial and regulative institutions in Libya needed to be developed and restructured in order to be able to enforce the market economy laws, especially after the dominance of the socialist system and state control over most economic transactions for decades.

Interviewee 14 argued that the legislative authorities need to reconsider the key constitutional legislation with respect to the protection of property rights in order to be able to issue and enforce proper laws and create a stable legal environment.

Table 8.6.2: Focused Coding Number 2 for Question 6

Former Libyan government took many procedures and arrangements to create an appropriate economic and financial environment	
Interviewee 4	Issuance of several important laws, establishing an institutional structure for privatisation
Interviewee 5	Issuance of several important laws, establishing an institutional structure for privatisation, establishing the investment agency, improving administrative and regulative procedures

The focused coding 2 results are shown in Table 8.6.2, according to which two interviewees argued that the previous Libyan government undertook many significant procedures and arrangements to create an appropriate economic and financial environment.

As can be seen, interviewee 4 stated that the former Libyan government actually managed to provide most of the requirements of the legal and regulative framework

for the market economy. He mentioned that the legislative authorities recently issued a number of important laws such as investment law, labour market law and the new Commercial Law, which regulates all acts and practices of the private sector. Moreover, he indicated that the former government established the institutional structure for privatisation to organise the implementation of the privatisation of SOEs.

Similarly, interviewee 5 stated that Libya took significant steps to create a legal and regulative environment for privatisation and the transition to the market economy. He indicated that there were many procedures and arrangements taken in this regard including substantial positive changes in several laws such as labour laws, taxes, banking, commercial law, and other relevant laws. Moreover, he mentions that the Libyan authorities also established an agency to privatise public sector companies, and a specialist department to encourage local and foreign investment. In addition, several measures were taken to simplify the procedures for establishing private sector companies and access to technical and financial consultants necessary to develop this sector.

The preceding discussion mainly focused on the process of privatisation. However, the consequences of the transformation of the economy are also an essential issue. Therefore, the third section, in question 7 of the interview schedule, aims to analyse the expressed opinions of the interviewees on the government's policies for handling the consequences of privatisation policies, mainly the adverse socio-economic impacts such as job losses and rising prices of goods and services, particularly those that were subsidised by the public sector. Answers to this question help in the assessment of the arrangements and measures taken by the government; the mishandling of this matter could be an obstacle to implementing the privatisation, as well as inflicting major harm on poor segments of society. The analysis of the answers to this question is presented in Table 8.7.

Table 8.7: Focused Coding for Question 7 (Views on the Handling of Adverse Social Impact of Privatisation)

Question 7: Do you think the former Libyan authorities considered and moderated the adverse social impact of privatisation such as moderating the consequences of redundancies and price and cost increases? If yes, how; and if no, why not?	
Focused coding	
1	Libyan authorities undertook a set of measures and arrangements to address the negative social effects of privatisation and market economic policies; however, there were many problems and shortcomings that affected these measures
2	The former Libyan government did not take the appropriate measures to mitigate the adverse social impact of privatisation
Theme	The former Libyan government took into account the negative social impacts of privatisation, and adopted many policies and arrangements for the purpose of mitigation of these effects. However, many problems and shortcomings faced during the implementation of these measures had prevented the achievement of the desired objectives. The failure to achieve the desired goals and the worsening of some social problems created serious doubts about the suitability of the adopted policies, as well as about the credibility and commitment of the government to address these social effects.

As can be seen in Table 8.7, the views of the participants can be classified into two major themes: (i) Libyan authorities undertook a set of measures and arrangements to address the negative social effects of privatisation and market economic policies, although many problems and shortcomings had affected these measures; and (ii) the former Libyan government did not take the appropriate measures to mitigate the adverse social impact of privatisation. These themes lead to a general understanding that the former Libyan government considered the negative social impacts of privatisation, and adopted many policies and arrangements for the purpose of mitigation of these effects. However, there were many problems and shortcomings during the implementation of these measures that prevented the achievement of the desired objectives. It should be noted that disappointing consequences and the worsening of some social problems created serious doubts about the suitability of policies adopted by the government in moderating the adverse social impacts of privatisation and economic transformation policies; furthermore, failure to achieve the desired goals created a doubt about the credibility and commitment of the government to address the negative social impacts.

More detailed descriptions of the established codings are presented in Tables 8.7.1 and 8.7.2.

Table 8.7.1: Focused Coding Number 1 for Question 7

Libyan authorities undertook a set of measures and arrangements to address the negative social effects of privatisation and market economic policies; however, many problems and shortcomings had affected these measures	
Interviewees 1&2	Adoption of many measures, administrative corruption
Interviewee 4	Adoption of measures to reduce prices, measures to compensate the most affected segments of society, measures to address redundancies issue
Interviewee 6	Adoption of many measures, unemployment problems before privatisation
Interviewee 7	Worsening of social impacts, need to focus on private sector development
Interviewee 8	Worsening of social impacts, failure and closure of many privatised companies, adoption of ineffective methods of privatisation

As shown in Table 8.7.1, in the first focused coding, six interviewees argued that the Libyan authorities undertook a set of measures and arrangements to address the negative social effects of privatisation and market economic policies, although many problems and shortcomings had affected these measures.

Interviewee 1 stated that the former Libyan government adopted several measures to address the adverse social impacts of privatisation. However, mismanagement and corruption in government departments prevented the adopted policies from achieving their objectives. Similarly, interviewee 2 indicated that, although the former government took several measures to mitigate the rise in prices, provide employment opportunities and compensate affected groups in society, there were many difficulties in the implementation due to corruption and favouritism in government departments.

Interviewee 4 stated that the former government considered the negative effects of privatisation mainly in terms of redundancies or price increases, who indicated that the government adopted many measures in this regard such as removing all import restrictions, encouraging importers by issuing relevant legislation, and providing financial and technical facilities. In addition, other measures were taken to compensate the most affected groups including the granting of investment portfolios, distribution of monthly returns, and the adoption of a policy of gradual abolition of subsidies on essential goods and services. He also mentioned that the government adopted measures that were intended to mitigate the impact of the redundancies and job losses by establishing a specialist centre to conduct training programmes, rehabilitation, and reintegration of surplus labour into the public sector, as well as to

provide job opportunities for job seekers. He also argued that one cannot assert that the policies adopted did not successfully address the social impacts, especially with regard to redundancies, as it takes time to deal with such problems. Similarly, interviewee 6 stated that the government adopted many counter-policies such as increasing salaries to address the effects of the policy of gradual abolition of subsidies.

Interviewee 7, further, stated that, although the government adopted suitable procedures to address the negative social impacts of privatisation, their handling requires more focus on the development of the private sector.

Interviewee 8 expressed that the government conducted respectable measures to mitigate the adverse social impacts of privatisation. However, the problem of job losses had been worsening due to the adoption of ineffective methods of privatisation that caused the failure and closure of many privatised companies.

Table 8.7.2: Focused Coding Number 2 for Question 7

The former Libyan government did not take the appropriate measures to mitigate the adverse social impact of privatisation	
Interviewee 3	Worsening of social impacts
Interviewee 5	Adoption of many measures, most of the solutions were temporary
Interviewee 9	Modest measures
Interviewee 10	Worsening of social impacts, increase in disguised unemployment
Interviewee 11	Worsening of social impacts, unwillingness to find radical solutions, lack of clear policies to create jobs
Interviewee 14	Lack of clear strategies, variable and ambiguous policies

In detailing focused coding 2, Table 8.7.2 shows the answers of 6 participants who stated that the former Libyan government did not take the appropriate measures to mitigate the adverse social impacts of privatisation.

Interviewee 3 stated that the increase in the unemployment and inflation rates in Libya after the privatisation policies were clear evidence of the failure of policies adopted by the former government to mitigate the adverse social impacts of privatisation and transformation policies. In the same context, interviewee 5 indicated that the former government tried to resolve the social problems by adopting certain policies. However, he believes that most of these policies were temporary and, hence, did not provide radical solutions. He mentioned that the government granted investment

portfolios to the poor people in society as compensation. However, he stated that this kind of procedure circumvents privatisation as these portfolios include shares in privatised companies and are invested in a state-owned investment fund. Accordingly, he believes that this procedure led to the subsidising of this investment fund to pay the monthly returns on the portfolios. Moreover, he indicated that the state tried to address part of the labour surplus caused by the privatisation problem by reallocating workers to other public sectors, resulting in the continuity of the burden on the public budget, especially when these sectors do not need extra employees. Similarly, interviewee 10 stated that the policies adopted by the former government worsened the problems, and contributed to increasing the disguised unemployment by the re-employment of workers in overstaffed public sectors, or by converting the labour into a public body to pay their salaries without providing work.

Interviewee 11 argued that the policies adopted by the previous government did not contribute to mitigating the social effects; he argued that this was due to the unwillingness of the government to make the transition to a market economy and develop the private sector, which would provide radical solutions to these problems. In supporting this, interviewee 14 stated that the former government did not adopt clear strategies, resulting in ambiguity and confusion in the implementation of reform policies, including those policies that were supposed to address the adverse social problems.

After discussing the specific issues with regard to privatisation and economic liberalisation, the third section also aims to analyse the opinions of the participants on a general level on the performance of the previous regime in the implementation of these policies. Question 8, hence, was developed to assess the performance of the former government in the implementation of economic reform and privatisation policies, in accordance with participants' perspectives. The analysis of the answers to this question is presented in Table 8.8.

Table 8.8: Focused Coding for Question 8 (Views on the performance of the former regime in the implementation of economic reform and privatisation policies)

Question 8: Do you think the former regime was successful in economic reform and privatisation? Please explain.	
Focused coding	
1	Former regime was not successful in economic reform and privatisation
2	Time is an important factor in judging the success of reform policies, as many policies were adopted only in the last few years, and the recent privatisation process is still in progress; the final judgement on the experience could be unfair
Theme	Since the previous regime adopted the policy of economic reform only in the last decade, and the recent privatisation is still in progress, the definitive judgement on the experience could be unfair. However, disappointing results in this period indicate that the previous government to a great extent was not successful in the implementation of economic reform and privatisation, as there were several obvious obstacles and deficiencies that hinder success of the economic reform and privatisation in Libya

As can be seen in Table 8.8, the views of the participants can be classified into two major themes: (i) the former government was successful in economic reform and privatisation; and (ii) time is an important factor in judging the success of reform policies, as many policies were adopted just in the last few years, and the recent privatisation process is still in progress. These themes lead to a general understanding that the economic reform policies were adopted only in the last decade, and the recent privatisation is still in progress; thus the definitive judgement on the experience could be unfair. However, unsatisfactory results in this period indicate that that the former government was unsuccessful to a great extent in the implementation of economic reform and privatisation, as there were many obvious obstacles and deficiencies hindering the achievement of the desired goals of economic reform and privatisation in Libya.

In further explaining the positions taken by the responders, focused coding of the established codings is presented in Tables 8.8.1, and 8.8.2.

Table 8.8.1, in responding to the first focused coding, shows that ten interviewees argued that the former regime was not successful in economic reform and privatisation.

Table 8.8.1: Focused Coding Number 1 for Question 8

Former regime was not successful in economic reform and privatisation	
Interviewee 1	Lack of sufficient studies and plans for privatisation, ignoring the particular circumstances of the Libyan economy
Interviewee 2	Conflicting and unstable decisions and policies
Interviewee 3	Right start for reform, administrative and financial corruption, shortcomings in the implementation phase
Interviewee 5	Significant control of the state in the investment and financing, weakness of the private sector
Interviewee 8	Socialist ideas continued to influence the decision-making process, conflicting and unstable decisions and policies
Interviewee 9	Poor management and supervision in government departments
Interviewee 10	Failure of many privatised companies, the economy is entirely dependent on imports, failure in dealing with the surplus labour problem
Interviewee 11	Failure of many privatised companies
Interviewee 13	The former regime was unwilling to reform
Interviewee 14	Dependence on one source of income, weakness of the private sector, failure to achieve goals

As can be seen, in Table 8.8.1, interviewee 1 argued that the former government's failure to achieve clear positive results could be attributed to the absence of adequate plans and studies for the implementation of economic reform policies, especially the privatisation policy. He stated that the relevant authorities did not consider the nature and circumstances of public companies; they also ignored the creation of an appropriate business environment, resulting in the emergence of various problems for privatised companies and the workers in these companies.

Interviewee 2 stated that the confusion and inconsistency in economic policy-making negatively affected the economy and business environment in Libya, which made the economic situation go from bad to worse. In supporting this statement, Interviewee 5 also argued that the former government did not succeed in reforming the economy because the state continued to control most aspects of it, especially investment and finance. He also stated that the weakness of the private sector and its inability to access the necessary funding are reflected in the failure of the government to develop this important sector.

In the same vein, Interviewee 8 argued that the previous government failed to reform the Libyan economy because of confusion and instability in the development of economic policies and the decision-making process. He explained that this confusion and instability was a result of the socialist understanding and policies that continued

to influence many of the most powerful policy-makers in the former regime. Similarly, interviewee 13 stated that the former regime was not serious in implementing the economic reform policies, as many policy-makers were still influenced by the socialist ideas and were very apprehensive about free economy strategies.

Participants 10 and 11 pointed out that most of the privatised companies were forced to halt production and get out of the market. They argued that these disappointing results reveal many defects in the implementation of privatisation, as well as shortcomings in the creation of an appropriate business environment. Interviewee 10 mentioned that the Libyan economy became totally dependent on imports, which could be an evidence of the failure of the former regime to improve the domestic productive sector. Moreover, he stated that the former government failed to address the problem of the labour surplus in the public sector; as these workers were transferred to the Ministry of Labour to receive their salaries without contributing to or participating in economic life.

Table 8.8.2: Focused Coding Number 2 for Question 8

Time is an important factor in judging the success of reform policies, as many policies were adopted only in the last few years, and the recent privatisation process is still in progress; the final judgement on the experience could be unfair	
Interviewee 4	Reform is still in its infancy, taking positive steps
Interviewee 7	Gradual growth of the private sector, slow in implementing economic reform policies

In responding to the focused coding 2, interviewee 4 states that the Libyan experience of economic reform is still in its early stages and cannot be judged definitively. He indicated that many of the laws and policies of the market economy, as well as its related institutions, were developed only in recent years, in addition to the privatisation process, which is still in progress. He argued that all these arrangements taken by the government are positive steps towards economic reform. However, they could take some time to achieve the desired objectives.

In contrast, Interviewee 7 stated that, although there was a slowing by the previous government in the implementation of reform policies, the private sector was growing gradually in the services, production, financial and banking sectors.

8.5 PERSPECTIVES AND EXPECTATIONS ABOUT THE TREND OF THE LIBYAN ECONOMY AFTER THE RECENT POLITICAL CHANGES

The preceding discussion focused on the past experience of the privatisation process, while this section turns the focus to present and future. After the recent political changes in Libya, it is important to explore the views of the participants about the economic understanding of the new government, as many economic policy changes are expected to take place in Libya, whether in the legal environment or in economic policies. The fourth section of the interview schedule, therefore, includes questions 9, 10, 11 and 12, which aims to explore the perspective and expectations of the participants about the economic trends of the new government following the political change that occurred in 2011. Moreover, this section aims to explore the participants' expectations about the new Constitution, the future of the Libyan economy, the economic role of the state and the size of the public sector in the post-conflict and political change period.

Question 9 aims to explore the expectations of the participants about the new Constitution after the recent political change. The analysis of the answers to this question is presented in Table 8.9.

Table 8.9: Focused Coding for Question 9 (Expectations about the New Constitution)

Question 9: Do you think the new Constitution will bring about a change in the economic regime of the country by stating that it is a market economy? Please state your understanding of the reasons for the chosen economic regime by the NTG?	
Focused coding	
1	The new constitution is expected to include key articles stipulating that the Libyan economy is a free economy and based on market rules
2	It is difficult to predict
Theme	Although a few participants mentioned that it is difficult to predict the new constitution, the majority wish and expect it to include explicit articles leading to market economy rules to address and avoid the distortions and problems observed in the Libyan economy

As presented in Table 8.9, the views of the participants can be classified into two major themes: (i) the new Constitution is expected to include fundamental articles stipulating that the Libyan economy is a free economy and based on market rules; and (ii) it is difficult to predict. Consequently, a general understanding can be developed:

while some of the interviewees mention that it is difficult to predict what the new Constitution will include, the majority of them wish and expect it to include explicit material providing market economy rules to address and overcome distortions and problems observed in the Libyan economy.

More detailed explanation of the contents of the established codings can be found in Tables 8.9.1 and 8.9.2.

Table 8.9.1: Focused Coding Number 1 for Question 9

The new constitution is expected to include key articles stipulating that the Libyan economy is a free economy and based on market rules	
Interviewee 1	Official statements, changes in neighbouring countries
Interviewee 4	Constitutional proclamation, conviction of the public sector failure, collapse of socialist regimes worldwide
Interviewee 5	Failure of the public sector, addressing many economic problems
Interviewee 6	Failure of socialist system in Libya
Interviewee 7	Official statements, advantages of the market economy
Interviewee 9	Clarifying the nature of the economic regime, addressing many economic problems
Interviewee 10 & 14	Addressing many economic problems

As part of the focused coding number 1 for question 9, Table 8.9.1 shows that eight interviewees argued that the new Constitution will include key articles stipulating that the Libyan economy is a free economy and based on market rules.

Interviewee 1 argued that the new Constitution would include articles providing for the liberalisation of the economy. He explains that many of the statements by officials in the transitional authorities provide a clear signal of the market liberalisation and the adoption of the rules and mechanisms of the market economy. Moreover, he suggested that the neighbouring countries such as Egypt and Tunisia, which have seen political change in the same period, are highly likely to increase liberalisation in their economies, which will certainly affect the Libyan economy following the political change.

Interviewee 4 indicated that, although the Constitution has not yet been issued, there are many indicators suggesting that it will include articles providing for the adoption of a market economy. He explained that the constitutional proclamation of the new revolution included some articles relating to property rights and protection of

ownership by individuals, indicating the adoption of the free economic system rather than public ownership and the socialist system. In addition, he stated that the new revolution in Libya was heavily supported by most Libyan businessmen. Moreover, the perception of most of the Libyan people about the failure of the public sector, which dominated economic activity for decades during the previous regime, as well as the collapse of most of the socialist regimes in Asia and Eastern Europe are strong factors in the adoption of a radical shift towards the market economy. Accordingly, interviewee 4 argued that it is highly likely that the new Libyan Constitution will include explicit articles supporting and reinforcing the rules of the market economy.

Similarly, interviewee 5 stated that the new Constitution would explicitly state that the economy will depend on market mechanisms. He explained that the experience of the public sector monopoly and its tragic results are strong incentives for the constitutionalisation of the market economy. In a similar vein, interviewee 6 believes that, due to the failure of the socialist experiment in Libya, radical and comprehensive changes in favour of the market economy will be introduced and will include changes in the legal environment and constitutional provisions.

Interviewee 7 considered that the statements by officials in the transitional authorities suggest that the new Constitution will provide for the market economy. He stated that the advantages of a market economy, including promotion of competition and giving freedom and space for the private sector, are expected to play a significant role in solving many economic problems in Libya. However, he argued that, in practice, the state's role in the economy will continue. Furthermore, the Libyan economy is expected to continue as a mixed economy in the near future because the state owns and manages the most important sources of income in Libya; accordingly, it is the planner and financier for development projects in Libya.

Interviewee 9 stated that Libya needs a radical change in the constitutional provisions to clarify the nature of the economic system and eliminate any confusion or ambiguity in the relevant legislations. Furthermore, he suggested that confirmation of the rules of the free economy would address many of the economic problems produced by the socialist system and state control over most economic activities in Libya.

Similarly, participants 10 and 14 argued that the new Constitution should contain provisions to support the rules and mechanics of the market economy in order to encourage the contribution of the private sector in addressing the economic problems in Libya.

Table 8.9.2: Focused Coding Number 2 for Question 9

The new constitution is difficult to predict	
Interviewee 2	Difficult to know what to expect, hoping it includes market economic rules
Interviewee 3 & 12	Difficult to know what to expect
Interviewee 8	Although the constitutional proclamation was issued, it is difficult to predict the contents of the new constitution

In responding to the focused coding 2, as can be seen in Table 8.9.2, four interviewees stated that the new Constitution is difficult to predict; however, it is hoped that it will include clear articles emphasising a market economy.

Interviewee 2 stated that it is difficult to predict the contents of a constitution that has not yet been issued; however, he hoped that the new Constitution will provide full political and economic freedom to all Libyan citizens. Similarly, participants 3 and 12 state that it is an unpredictable issue, and they prefer not to answer until a new Constitution is issued.

In the same line, Interviewee 8 also indicated that despite a constitutional proclamation being issued, it is difficult to predict the content of the new Constitution, which will be put to a referendum of the Libyan people.

As can be seen from various positions, all the participants are in favour of the market economy. While some are confident that the new regime will ensure such a transformation, others have difficulty in predicting the expected changes, but they still expect a market economy.

After exploring the expectations of the participants about the new Constitution, question 10 aims to explore the perspectives of the interviewees on the economic policy understanding of the national transitional government (NTG). The analysis of the answers to this question is presented in Table 8.10.

Table 8.10: Focused Coding for Question 10 (the economic policy understanding of NTG)

Question 10: From the experience you have had with the NTG so far, what kind of economic policy understanding do they have?	
Focused coding	
1	Understanding and directions of economic policy are not totally clear, because the current government is a transitional government and its functions are limited in some interim issues
2	Although policies are not entirely clear due to the nature of the stage, the main directions and decisions issued give an indication that that current government has a tendency towards liberalisation of the economy, as well as aiming to structure the Libyan economy as a free economy in the near future
Theme	The transitional government is leading the country for a temporary period, and its functions are limited in developing solutions to the post-conflict problems. However, the directions and resolutions issued so far give the impression of a preference for the free market, as well as providing an indication that the Libyan economy is moving towards a market economy

As can be seen in Table 8.10, the views of the participants can be classified into two major themes: (i) orientations of economic policy are not totally clear, as the current government is a transitional government and its functions are limited in some temporary issues; and (ii) although policies are not totally clear due to the nature of the stage, the main directions and decisions issued provide an indication that current government has a tendency towards liberalisation of the economy with the objective of structuring a free economy in the near future. It can therefore be concluded a general understanding that the transitional government is leading the country temporarily, and its functions are limited in solving some of the problems that emerged after the conflict in Libya; however the directions and decisions issued by the government so far renders the impression of a preference for the free market, as well as giving an indication that the Libyan economy is moving towards a market economy.

Further explanation in terms of focused coding of the established codings is presented in Tables 8.10.1, and 8.10.2.

Table 8.10.1 illustrates the answers of eight participants who argued that the understanding of the new government and directions of economic policy are not

totally clear, because this government is a transitional government and its functions are limited in some interim issues.

Table 8.10.1: Focused Coding Number 1 for Question 10

Understanding and directions of economic policy are not totally clear, because the current government is a transitional government and its functions are limited in some interim issues	
Interviewee 1	There have been no changes in economic policy
Interviewees 3,5,10,13 & 14	Economic policy is still unclear
Interviewees 7&12	Dealing with phase necessities only

As can be seen, in Table 8.10.1, interviewee 1 stated that it is difficult to determine the orientation or the understanding of policy-makers in this period. However, he indicated that it is possible to note that economic conditions and mechanisms of economic decision-making in Libya have not changed yet.

Similarly, many participants, such as 3, 5, 10, 13 and 14, pointed out that currently the economic policies of the transitional authorities are not clear, as they have not undertaken any measures or policies that explicitly describe the economic policies in Libya.

Participants 7 and 2 stated that the transitional authorities are currently dealing with the needs and necessities of the post-conflict phase, and are thus trying to make decisions and adopt temporary measures to solve some of the most pressing problems rather than developing economic policies for the future of Libya.

Table 8.10.2: Focused Coding Number 2 for Question 10

Although policies are not entirely clear due to the nature of the stage, the main directions and decisions issued give an indication that the current government has a tendency towards liberalisation of the economy, and that the Libyan economy will be a free economy in the near future	
Interviewees 2 & 6	Economic policy is one of the elected government's functions, indications for the market economy
Interviewee 4	Restoring security and stability, some decisions and indications for the market economy, greater role for the private sector in the transitional stage
Interviewees 8, 9 & 11	Indications for the market economy

Table 8.10.2 shows the answers of six participants who argued that although policies are not fully clear due to the nature of the stage at which the country is standing now, the main directions and decisions issued give an indication that the current government has a tendency towards liberalisation of the economy, and that the Libyan economy will be a free economy in the near future.

Participants 2 and 6 stated that economic policy-making will be the task of the next government or the elected government. However, there are many expectations and indications from the resolutions of the current government that the Libyan economy is moving towards a market economy.

In this context, interviewee 4 stated that most of the decisions and policies of the transitional authorities are concerned with restoring security and economic stability to the country, including the provision of necessary goods and services and maintaining prices in the market. However, from the economic decisions and major trends of the transitional government, it is expected that the Libyan economy will be a free economy after the restoration of security and stability. He added that private sector involvement in the importing and distribution of necessary goods and services at this stage is an indication that the economy is moving towards a free economy that is more reliant on the private sector.

Similarly, participants 8, 9 and 11 indicated that many of the decisions taken by the transitional government, be they economic decisions or decisions calling for the need to amend and activate market economy laws, give a clear indication that the transitional authorities are working for the liberation of the Libyan economy and the stimulation of the mechanics of a market economy.

In the fourth section, after exploring the perspectives of the participants on the economic policy understanding of the national transitional government (NTG), question 11 was put to the participants to explore their views and preferences about the nature of the Libyan economy, and the need for further liberalisation and privatisation in the future. The interview data is analysed and presented in Table 8.11.

As can be seen, in Table 8.11, the views of the participants can be classified into two major themes: (i) the Libyan economy should be further liberalised and privatised; (ii)

it should be further liberalised and privatised except for some sectors such as low-competition sectors and strategic projects. In consequence, these themes lead to a general understanding that the Libyan economy should be further liberalised and privatised to address many economic and financial problems resulting from state control and domination of the public sector. However, it should be taken into consideration that some sectors require certain conditions to be successfully privatised.

Table 8.11: Focused Coding for Question 11 (The Need for further Liberalisation and Privatisation)

Question 11: Do you think the Libyan economy should be further liberalised and privatised? If yes, why; and if no, why not?	
Focused coding	
1	The Libyan economy should be further liberalised and privatised
2	It should be further liberalised and privatised except in some sectors such as low competition sectors and strategic projects
Theme	The Libyan economy should be further liberalised and privatised to address many economic and financial problems resulting from state control and domination of the public sector. However, it should be taken into consideration that some sectors require certain conditions to be successfully privatised

Additional explanation in terms of focused coding of the established codings is presented in Tables 8.11.1 and 8.11.2.

Table 8.11.1: Focused Coding Number 1 for Question 11

The Libyan economy should be further liberalised and privatised	
Interviewee 4	Problems of the public sector, high unemployment rate, inability of the state to provide all services and goods needed by the citizens
Interviewee 5	Inefficiency of SOEs, high unemployment rate
Interviewees 6 & 7	Relying more on private sector, activation of related laws
Interviewee 8	Addressing economic problems, developing suitable plans and strategies
Interviewee 9	Diversification of income sources
Interviewee 11	Diversification of income sources, providing job opportunities
Interviewee 13	Inability of the state to perform all economic functions, government should be a regulator
Interviewee 14	Diversification of income sources, creating competitive environment, government should be a regulator

In detailing focused coding 1, Table 8.11.1 shows the answers of nine participants who argued that the Libyan economy should be further liberalised and privatised.

Interviewee 4 stated that the Libyan economy should be further liberalised and privatised since the failure of public sector has become clear and requires radical solutions. He explained that several problems have emerged as a result of the state's control of economic activities and its policy of ignoring the role of the private sector, including rising unemployment rates and the inability of public sector enterprises to provide essential services and commodities at appropriate prices and quality for Libyan citizens. He argued, therefore, that all these problems require continuous stimulation of the private sector's role and the adoption of further policies to liberalise the Libyan economy.

Similarly, interviewee 5 stated that control of the public sector produced many problems such as inefficiency in allocating the economic resources of the country, as well as the high rate of unemployment in Libyan society. He argued, therefore, that adopting more economic liberalisation policies and encouraging private sector participation could be effective solutions for such problems.

Participants 6 and 7 suggested that the adoption of policies of economic liberalisation and more reliance on the private sector will have a clear role in economic development in Libya. However, they asserted that these policies require the activation of relevant laws to control economic activity and achieve the desired goals of privatisation and market liberalisation policies.

Similarly, interviewee 8 stated that the contribution of the private sector in economic activity would play a significant role in addressing many economic problems resulting from the public sector dominance. However, he argued that the economic transformation should be based on proper studies and plans to ensure positive results of this process.

In supporting this views, Interviewee 9 stated that the Libyan economy should be further liberalised and privatised because of the urgent need to create alternative income sources, as the Libyan economy depends entirely on oil; this represents a threat to economic stability and development in Libya.

Similarly, interviewee 11 stated that opening the door to the private sector and adopting further liberalisation policies would contribute to providing job opportunities

in the Libyan market, as well as helping to diversify sources of income for the Libyan economy.

Interviewee 13 stated that the Libyan economy should be further liberalised and privatised because the state has proved its inability to perform all economic functions; accordingly it should only play the role of the regulator in economic activity. In the same way, interviewee 14 argued that policies of privatisation and economic liberalisation would create a competitive environment helping to achieve many positive results in the Libyan economy, in addition to the possibility of creating alternative resources for the Libyan economy rather than total reliance on oil. He also stressed that the state should play the role of regulator of economic activity in order to guarantee the achievement of desired goals, and prevent any deviation from occurring in the economic transformation process.

Table 8.11.2: Focused Coding Number 2 for Question 11

The Libyan economy should be further liberalised and privatised except in some sectors such as low-competition sectors and strategic projects	
Interviewees 1 & 2 & 3	Privatisation in productive competitive sectors, consideration of some service sectors, keeping strategic projects
Interviewee 10	Developing the private sector, keeping strategic projects

As presented in Table 8.11.2, four interviewees argued that the Libyan economy should be further liberalised and privatised except in some sectors such as low-competition sectors and strategic projects.

Interviewees 1, 2 and 3 stated that the Libyan economy should be further liberalised and privatised, especially in competitive productive sectors. However, they argued that many sectors are not sufficiently competitive; these so-called natural monopoly sectors such as electricity, telecommunications, transportation and water should remain under the care and supervision of the state until a suitable environment is created for a successful transformation.

Interviewee 10 suggested that the state needs to take gradual measures in implementing privatisation, and it should focus on how to develop the private sector to be able to perform the economic functions. He argued that, at this stage, the state

should retain the strategic projects that may affect the stability of the Libyan economy and consumer welfare in Libyan society.

As part of the fourth section, which aims to explore the expectations about the Libyan economy, question 12 aims to explore the expectations of the participants about the role of the state in reconstruction and development after the revolution, and whether the damage to the infrastructure will again result in increased public sector activity in the Libyan economy. The interview data are analysed and presented in Table 8.12.

Table 8.12: Focused Coding for Question 12 (The economic role of the state and public sector after the revolution and the political change)

Question 12: Considering that Libya needs reconstruction and development after the revolution due to the damaged infrastructure, do you think that such projects will be undertaken by the state? If yes, do you think this will again result in increased public sector activity in the economy?	
Focused coding	
1	The state will be responsible for funding and supervision of reconstruction and development projects. However, this will not result in increasing public sector activity in the economy
Theme	The state will be responsible for reconstruction and development projects after the conflict related to the revolution in 2011. However, the state is expected to be just a financier and regulator for these projects because it controls the oil, which is the main resource of the country. In addition, it is not expected that this responsibility of the state will increase the public sector involvement in the economy, as these projects are expected to be implemented by foreign and domestic private companies.

As presented in Table 8.12, there was a single focused coding established from the answers of participants, as they all argued that, during the upcoming phase, the state will be responsible for funding and supervision of reconstruction and development projects. However, this will not result in an increase in the public sector in the economy. Consequently, as a general theme can be developed: the state will be responsible for reconstruction and development projects after the conflict that occurred during the revolution in 2011. However, the state is expected to only be just a financier and regulator for these projects because it controls the oil, the main resources of the county. In addition, it is not expected that such responsibility of the state will increase the public sector in Libya, as these projects are expected to be implemented by foreign and domestic private companies.

Focused coding of question 12 in a detailed manner can be found in Table 8.12.1.

Table 8.12.1: Focused Coding Number 1 for Question 12

The state will be responsible for funding and supervision of reconstruction and development projects. However, this will not result in increasing public sector activity in the economy	
Interviewees 1 & 8	State finance, foreign investment, reactivation of pre-revolution contracts
Interviewee 2	State finance, lack of technical capacity in the public sector, foreign companies
Interviewees 3 & 5 & 6 & 13	State finance, foreign investment, domestic private companies in some small projects
Interviewee 4 & 7	State controls the financial resources, state finance, weakness of the domestic private sector, foreign investment, domestic private companies in some small projects
Interviewees 9 & 10 & 11	State finance
Interviewee 12	State finance, foreign companies
Interviewee 14	State finance, foreign companies, international pressure

In detailing focused coding 1, Table 8.12.1 shows the answers of all participants who argued that the state will be responsible for funding and supervision of reconstruction and development projects. However, this will not result in an increase in public sector involvement in the economy.

Participants 1 and 8 argued that the state will be the financier for reconstruction projects in Libya. However, foreign companies will carry out these projects. Moreover, they point out that many contracts were signed with foreign companies and many projects had already started before the revolution in February 2011. Thus, these contracts will be re-activated and the foreign companies are expected to resume the implementation of development projects.

Similarly, interviewee 2 stated that reconstruction projects will be funded by the state, while being carried out by foreign companies. He argued that the state will not implement such projects as public companies operating in the field of reconstruction and construction do not have the technical capacity to implement large projects required at this stage. Likewise, interviewees 3, 5, 6 and 13 stated that reconstruction projects will be funded by the state while being carried out by foreign companies,

with the possibility of the involvement of the local private sector in some small projects.

In the same way, participants 4 and 7 pointed out that the state manages the financial resources of the country and is therefore responsible for financing the reconstruction and infrastructure projects. Interviewee 4 argued that the implementation will be through foreign companies, especially after the privatisation and the dissolving of many of the public companies that were operating in the field of construction. He also indicated that the weakness of the private sector in Libya will reduce its participation in large projects. However, it is expected to engage in the implementation of some small construction projects.

Moreover, participants 9, 10 and 11 stated that the state will act only as financier in reconstruction and infrastructure projects; thus there will be no expansion in the role of the public sector again in the Libyan economy.

Similarly, interviewees 12 and 14 argued that reconstruction projects will be funded by the state, while being implemented by foreign companies. In the same vein, interviewee 14 stated that foreign investment will play a major role in reconstruction in Libya as a result of the expected pressure from some countries that have frozen money belonging to Libya. He suggested that some countries are expected to offer investment and companies to implement reconstruction projects, rather than giving cash and handing the money over to the Libyan authorities.

8.6 CONCLUSION

This chapter presented an analysis of the interviews conducted on the privatisation policy and economic transition in Libya. These interviews included a series of questions that can be classified into three sections or parts. The first section aimed to identify the demographics of the participants. It should be noted that the participants all represent different stakeholders in the Libyan economy and therefore represent a diversity of opinions.

The second section included questions 2, 3 and 4, and aimed to explore the interviewees' opinions about the economic system, liberalisation policies and the experience of privatisation in Libya. The second question aimed to explore whether

the former regime had succeeded in establishing a stable system for the economy that was consistent with the policies adopted recently, including the privatisation of public sector institutions, and encouraging the private sector to play a greater role in economic development. The analysis of answers to this question showed that a number of participants, mostly academics, stated that the economic system under the previous regime in Libya was a mixed system, and was closer to the socialist system. They pointed out that the previous government adopted many liberal policies and had recently allowed the private sector to engage in some economic activities. However, they argued that there were many limitations and restrictions on ownership and participation by the private sector in economic life.

In contrast, a number of participants, especially senior staff in state agencies and the Libyan Capital Market, stated that the economic system in Libya was unclear and unstable. They claimed that the economy did not have any definition, as it was ambiguous in character. They argued that decision-making and the process of issuing the relevant legislation were unstable during the previous political regime, creating conflicting decisions and legislation that led to a lack of clarity in the parameters of the economic system. These answers of senior staff in state agencies and related financial and economic sectors could be attributed to the closeness of these participants to the decision-making process in the Libyan government; furthermore, due to their jobs and positions they are directly affected by the instability and inconsistency in the decisions and laws that regulate economic activity. Accordingly, they stated that the instability and inconsistency in decision-making had created uncertainty and instability in the economic system for decades in Libya.

Question 3 was designed to examine whether the Libyan attempt to shift to a market economy and liberalisation of the economy was a genuine policy stemming from the conviction that the transformation was necessary, or was merely lip service to international pressure. Analysis of the answers to this question showed that the majority of the interviewees, with various backgrounds and positions, stated that the former government's attempt to achieve a market economy was a genuine policy resulting from several internal and international factors. However, a number of participants, especially some senior staff in government institutions, stated that this attempt was merely paying lip service to the international and domestic pressure, as

the government had offered no clear strategy and plans; this resulted in the issuance of conflicting decisions relating to policies of economic transformation and privatisation, creating doubts about the commitment and willingness of the former government to implement these policies.

Question 4 attempted to locate the rationale and need for adopting market economy policies and a privatisation programme in Libya through the opinions of interviewees. Analysis of the answers to this question showed that the majority of the interviewees, with various backgrounds and positions, stated that Libya needed to shift to a market economy and should privatise its SOEs, especially after the failure of the public sector and the disappointing results of the state dominance of the Libyan economy. Notably, four participants stated that many issues related to the privatisation programme and market economy policies had to be taken into account by the government to ensure a proper transition and to minimise the negative effects of such policies.

The third section included questions 5, 6, 7 and 8 which aimed to explore the views of the participants about the Libyan economic, financial, legal and regulative environment and its appropriateness for efficient implementation of privatisation and the transition to a market economy. In addition, this section aimed to explore the views of participants on the commitment of the previous government to addressing the negative social effects that arise from the adoption of privatisation and economic liberalisation policies. Moreover, this section analysed the participants' views about the performance of the previous government, in general, in implementing the privatisation process and economic transformation policies. Analysis of the answers given to question 5, regarding the economic and financial environment in Libya, showed that the majority of the participants, with various backgrounds and positions, stated that Libya has not achieved an appropriate economic and financial environment for an efficient privatisation process and transition to a market economy, in spite of the provision of many conditions that could help to create this environment. Regarding the legal and regulative environment, the analysis of the answers to question 6 showed that the majority of the interviewees, with various backgrounds and positions, stated that the former government did not provide an appropriate environment for an efficient privatisation process and transition to market economy, even though it undertook a series of measures and issued a number of related laws.

With regard to the policies of the previous government to address the negative social effects that may result from privatisation and the state's reduced role in the economy, the analysis of the answers to question 7 showed that many interviewees believed that the previous government had adopted several policies to address most of the negative effects of privatisation and economic liberalisation policies. However, the implementation of these procedures was clearly defective, which hindered the achieving of the desired goals. In contrast, a number of participants argued that the policies and procedures taken by the previous government were not appropriate and, thus, did not achieve clear, positive results.

Concerning the assessment of the performance of the previous government in implementing the privatisation programme and policies of economic reform, the analysis of answers to question eight showed that, as many of the policies of economic liberalisation and privatisation had only recently been adopted, it was accordingly difficult for some participants to judge the results, since it takes time for such policies to achieve the desired objectives. However, the majority of the participants, of various backgrounds, stressed that the previous government had generally been unsuccessful in implementing policies of privatisation and economic reform.

The last section presented the analysis of questions 9, 10, 11 and 12, with the objective of exploring the participants' perspective on the economic trends of the new government after the political change that occurred in 2011. Moreover, this section aimed to explore the participants' expectations about the new Constitution, the future of the Libyan economy, the economic role of the state and the size of the public sector in the post-conflict and political change period.

With respect to the participants' expectations of the new Constitution, the analysis of answers to question 9 showed that, although some participants stated that it is difficult to predict the contents of the new Constitution, the majority of interviewees expected and hoped that the new Constitution would include provisions that clearly support the transition to a market economy in order to solve the many economic problems resulting from the dominance of the state and the public sector in economic activity in Libya.

With regard to participants' perceptions of the economic understanding of the transitional government, the analysis of question 10 showed that, although the transitional government is leading the country for an interim period and its tasks are limited in developing solutions for the post-conflict problems, many of the interviewees reported that directions and resolutions issued so far give the impression that it had a preference for the free market, as well as giving an indication that the Libyan economy is moving towards a market economy.

Analysis of answers to question 11 on the need for further privatisation and liberalisation policies for the Libyan economy shows that the majority of the participants, with various backgrounds and positions, stated that the Libyan economy should be more privatised and liberalised, although some argued that certain sectors, especially non-competitive ones and some strategic projects, should continue to be under the care and supervision of the state until an appropriate environment is created for the successful transformation.

Finally, with regard to the expectations of the participants about the role of the state and the size of the public sector in the process of reconstruction during the post-conflict period, all participants, with various backgrounds and positions, stated in their answers to the question 12 that the state will be the financier for reconstruction projects, while implementation would mostly be carried out by foreign companies, with the possibility of some local private sector companies being involved in some small projects. Accordingly, interviewees expect that the role of the state in the economy will not increase; hence, they do not expect an increase in the size of the public sector in Libya at this stage.

CHAPTER 9

CONTEXTUALISING THE MAIN RESEARCH FINDINGS: AN INTERPRETATIVE DISCUSSION

9.1 INTRODUCTION

This chapter provides an integrated and systematic understanding of the research presented in this study by bringing the findings obtained in the previous chapters of this study together with the objective of contextualising the research and assessing the contribution of the study to the knowledge in the relevant field.

As mentioned in the first chapter, the main aim of this study is to explore and evaluate the adequacy and effectiveness of the financial, economic, legal, administrative and social environment for the efficient implementation of the privatisation programme in Libya. In addition, a number of objectives and research questions are developed in order to operationalise the research. Therefore, this chapter discusses the findings in an integrative manner with the objective of providing answers to the questions of the study.

This chapter, in its second section, discusses the results relating to the privatisation policy in general, including the rationality of this policy and the key conditions and requirements for its efficient application, by discussing the research findings obtained from several theories and studies conducted on previous international experiences. In Section Three, the focus is on the research findings associated with the nature of the Libyan economy and related issues, such as reasons for the dominance of the state and public sector enterprises in the Libyan economy for decades, the performance of the SOEs, and the rationale for privatisation policies and the reduction of the state's economic role in the Libyan economy. Section Four discusses the research findings relating to the commitment of the former Libyan regime to providing the main requirements and creating the appropriate financial, economic, regulative and legal environment for efficient privatisation and effective economic transformation. Section Five is concerned with the perceptions and expectations of Libyan specialists, including academics, professionals and staff in government departments, about the

economic system and privatisation-related policies in the coming phase, following the political change that has taken place in Libya recently.

9.2 REFLECTING ON THE RATIONALE FOR PRIVATISATION AND REQUIREMENTS FOR ITS SUCCESS

The first objective of this study, as stated in the first chapter, is to identify the requirements for the successful implementation of privatisation in developing countries. To fulfil this objective, question cluster 1 was developed and includes two questions:

- What is the rationale for privatisation?
- What are the efficient and effective conditions for privatisation, especially in developing and transitional economies?

These issues have been discussed in detail in the second and third chapters, and the main findings are presented as follows.

9.2.1 Rationale for Privatisation

As discussed in Chapter 2, the international experience has shown that there are many reasons and motives for the adoption of a privatisation policy and the reduction of the state's economic role. A large number of studies covering many countries, both developed and developing, have proved that the performance of public enterprises is usually inefficient and ineffective, and state control of economic activity has resulted in many economic and financial problems, such as continuous budget deficits, high rates of unemployment, disguised unemployment, and low or zero private sector participation in economic activity due to the state monopoly. For these reasons, privatisation has become a global policy that has been adopted in most countries of the world with the objective of achieving a set of goals to address the problems faced by the public sector.

As stated in Chapter 2, although the goals of privatisation may vary from one country to another, it usually aims primarily to improve economic efficiency by improving the performance of economic enterprises and reducing the burden on the state budget by privatising SOEs and reducing the subsidies granted to these enterprises. However, in

addition to these goals, the privatisation policy in many countries, especially former socialist countries, may have slightly different aims such as expanding the ownership base, opening the door for the local and foreign private investors to contribute more to economic activity, developing financial markets that would be significantly affected by the privatisation of SOEs and increasing the contribution of the private investors.

Furthermore, there are many theories in support of privatisation policies, and these were discussed in detail in Chapter 2, particularly in section 2.4. Supporters of public choice, property rights and agency theory believe that the inefficiency of SOEs was due to the nature of public ownership *per se*. However, many authors and specialists, as stated in Chapter 2, believe that, in addition to the problem of public ownership, the lack of a competitive environment should also be considered as one of main reasons for the failure of the public sector and the inefficiency of its institutions. Without going into further discussion with the objective of not repeating them here, in summary it can be stated that various studies and theories, as discussed in detail in the Chapter 2, emphasise that the rationale for privatisation and the transfer of ownership of public enterprises to the private sector is to provide better management and a better incentives and rewards system. In addition, privatisation would protect the public resources and public companies from the exploitation of politicians and bureaucrats, and thus achieve economic and financial objectives rather than the political goals and personal interests of the politicians and bureaucrats. Moreover, privatisation and the transition to a market economy would stimulate competition among economic institutions, thus improving the performance and efficiency of these enterprises and addressing the financial and economic problems produced by the public sector and state control of economic activity.

In reflecting on the Libyan case, one can conclude that the competition in the market had been very weak, as the market was monopolised and dominated by the public sector enterprises. This situation, as stated in Chapter 4, was mainly due to the socialist ideas adopted by the former regime since the 1970s which resulted in the issuing of many laws and resolutions limiting the private investments and the role of the private sector in almost all economic activities, as the public sector contribution amounted to about 92% of total investments in the 1980s. This monopolistic situation in the Libyan market was one of the reasons for the poor performance of public

economic institutions; the managers of these institutions were not exposed to the threat of competition pressure, which is supposed to be a strong incentive to improve performance. Thus, in the Libyan experiment, the lack of competition could be considered as one of the main reasons for the failure of the public sector and a motivation and rationale for the privatisation policy.

In addition, in line with theories mentioned earlier, the public sector in Libya was negatively affected by the public ownership and management. As stated in Chapter 4, politicians' intervention in the investment policies and management of the SOEs was evident from the presence of surplus labour in the public sector and the emergence of the so-called disguised unemployment problem, which reflected the intervention in the employment policy of these enterprises with the objective of achieving political and social objectives at the expense of economic and financial goals. Moreover, as stated in Chapter 4, the intervention in the pricing policies in public enterprises, as well as the adoption of policies supporting loss-making enterprises, negatively affected the incentives and punishment systems and the performance of managers on the one hand, and the competition in the market on the other. In addition, the massive corruption observed in the public sector enterprises reflects the weakness of monitoring systems in public ownership. Thus, it seems clear that the Libyan experience of the public sector is consistent with the arguments of the theories and studies mentioned earlier, as politicians' and bureaucrats' intervention to achieve political and social objectives and personal interests, poor monitoring structure, lack of incentives and punishment systems, and the lack of competition in the market resulted in serious economic and financial problems in the Libyan economy; this represents the rationale for privatisation in Libya.

In an attempt to investigate the Libyan case with a theoretical perspective, public choice theory may perhaps be useful for identifying the role of the politicians and bureaucrats, who considered the expansion of the public sector as an important part of their own individual perks enabling them to run a rentier economy within patronage and clientelism. In other words, politicians used the public sector for redistributive policies through patronage to gain legitimacy and support. For this, the existence and growth of public sector was essential. Since the use of the public sector for such purposes is by definition inefficient, the inefficiency was the common feature of the

everyday operation of the public sector. This in itself is enough to justify privatisation in Libya. However, the valid question is how politicians and bureaucrats came to terms with privatisation, as this meant them losing their sources of patronage. This can also be explained through external impact and Libya's urgent need to integrate with the larger part of the world. It should also be noted that it might be an important research investigation to see the ownership structure of the privatised companies whether the former bureaucrats have become the 'crony capitalists' or not.

9.2.2 Requirements for the Successful Privatisation in the Light of the International Experience

As stated in Chapter 3, the privatisation experience has differed from one country to another in terms of goals, implementation methods, and results achieved. Many studies have proved that, although privatisation in many countries has achieved positive results, in some experiments, especially in developing and transitional countries, the results were disappointing, creating serious doubts about the appropriateness and effectiveness of the privatisation policy in itself. As discussed in Chapter 3, these differences were due to the presence of important conditions and factors essential for its success. In this context, it should be mentioned that, although there is no uniform model for privatisation, certain key conditions must be met to ensure its efficient application. These conditions may vary depending on the nature of the economy; capitalist economies, for instance, could require certain conditions such as political support, transparency in the implementation of the programme, and the mitigation of social effects that may accompany the privatisation of public institutions. Providing these requirements would enable the government to avoid objections by parties that may be affected by privatisation, as well as ensure that the economic and financial results achieved by privatisation were not at the expense of society and the living conditions of citizens. However, in transitional countries, in addition to those requirements mentioned above, several conditions need be taken into account by the government in implementing the privatisation policy, as privatisation in such countries means not only selling assets or public sector institutions but also transformation from a socialist and state-controlled economy to an economy that relies more on the private investments.

Accordingly, as detailed in Chapter 3, a number of institutional, functional and policy arrangements and additional measures should be taken into consideration for the success of the privatisation process, including the creation of an appropriate financial, economic, social and legal environment that builds confidence among private investors, encouraging private sector participation, and creating a competitive environment in the market to achieve the desired goals of privatisation and economic transformation policies. These requirements and conditions are discussed in detail in Chapter 3.

It seems clear from the above and the discussion detailed in Chapter 3 that the experience of in particular transition countries indicates that in their attempt for privatisation, they prepared the necessary conditions, as outlined above, for efficient privatisation and economic transformation policies.

9.3 REFLECTING ON THE FINDINGS RELATED TO THE LIBYAN ECONOMY AND THE RATIONALE FOR PURSUING PRIVATISATION IN LIBYA

The second objective of this research is to study the nature of the Libyan economy and the rationale for pursuing a privatisation policy. In order to fulfil this objective the question cluster two was developed, which includes three questions:

- What are the main characteristics of the Libyan economy?
- What is the rationale for the heavy presence of the public sector in Libya?
- Why was it necessary for the Libyan economy to adopt privatisation policies?

As stated in Chapter 4, Libya was one of the world's poorest countries before the discovery of oil at the beginning of the 1960s. However, the discovery of oil in the 1960s enabled the state to start implementing several social and economic development plans. These plans were generally designed to achieve a number of goals such as creating the infrastructure, establishing a production base, reducing the dependence on oil, and achieving self-sufficiency.

Accordingly, as stated in Chapter 4, the Libyan economy became centrally planned and controlled by the state, and the public sector played a key role in the

implementation of development plans for several reasons, such as the state's ability to finance large development projects that needed large amounts of money, and the weakness of the private sector in that period. In addition, as stated in Chapter 4, other factors played a major role in expanding the public sector in the Libyan economy, such as the adoption of a socialist ideology and policies for a planned economy over a long period; which resulted in legislating a series of laws and resolutions that have contributed significantly to the dominance of the state and the public sector in the Libyan economy.

As result, state dominance and the over-expansion of the public sector have generated many disadvantages for the Libyan economy, such as inefficiency in allocating economic resources, failure to diversify sources of national income or find a substitute for oil, mismanagement of public companies, labour surpluses, continuing losses, and the accumulation of debt in the Libyan banking sector. Moreover, many studies and reports, as stated in Chapter 4, have shown that the public sector generated significant problems such as inefficiency, low productivity, and an inability to achieve profitability; hence, its inability to compete or survive without financial support and subsidy from the government imposed a burden on the public budget.

In this context, as stated in Chapter 4, many authors believe that the disappointing performance and failure of the public sector in Libya was due to several factors, including the lack of competition and the monopolistic position of the public sector, and state intervention in the pricing policies of SOEs, as well as investment and employment policies, in order to achieve political and social objectives rather than economic and financial goals. In addition, the lack of a monitoring system and punishment and incentive systems was a significant reason for the inefficiency and ineffectiveness of public ownership in Libya. These factors were the most important causes of the failure of public ownership in Libya and the main rationale for adopting policies to encourage private investments and privatisation of SOEs.

Furthermore, in the interview survey conducted in this study interviewees were asked for their views on the rationale to privatise SOEs in Libya. The majority of interviewees stated that Libya certainly needed to shift to a market economy and privatisation of SOEs, especially after the failure of most SOEs to achieve the desired

goals, and the emergence of many problems caused by state control of economic activity such as inefficiency of SOEs, public budget deficits, poor quality of services and goods provided, and disguised unemployment. However, some of them argued that many issues had to be taken into account by the government to ensure a proper transition and minimise the negative effects of the liberalisation policies. It should be mentioned that these negative impacts include possible social problems resulting from privatisation and the reduction of the state's economic role, such as redundancy and impacts on prices and quality of goods and services in the market. As stated earlier, considering and mitigating these impacts is one of the requirements for a successful privatisation, as the experience of many countries, as detailed in Chapter 3, has proved that the failure of governments to deal with these issues causes damage to the redundant employees and poor segments of society, leading usually to strong opposition to the privatisation and economic reform programme.

To sum up, it seems clear from the discussion above that, due to disappointing consequences of the dominance of the state in the Libyan economy and the failure of the public sector, the Libyan government, in the late 1980s and early 1990s, began to adopt policies to gradually reduce the role of the public sector in the economy, and to reduce state intervention in economic activities; it began to develop many mechanisms to encourage and stimulate private investments to increase the role of the private sector in economic life, along with a policy of privatisation of SOEs in order to address problems resulting from the control of the public sector, and to improve the efficiency and productivity of economic enterprises in the Libyan economy. Thus, these findings provide a sufficient response to the question on the rationale for adopting the privatisation programme in the Libyan economy.

9.4 REFLECTING ON THE AVAILABILITY OF REQUIREMENTS FOR EFFICIENT PRIVATISATION IN LIBYA

As mentioned earlier, international experience has proved that privatisation can yield differing results, which is determined by the conditions and requirements that should be provided by governments before and during the implementation of privatisation in order to achieve the desired goals.

To study the Libyan case and explore the availability of these requirements, this research developed the following objectives in relation to this section:

- to investigate whether the Libyan Government is sufficiently committed to the privatisation policy;
- to explore the adequacy of the Libyan financial, economic, legal, administrative and social environment for the efficient implementation of privatisation;
- to explore the institutional initiatives taken by the government to overcome the adverse social consequences of privatisation in Libya.

In order to fulfil this objective, question cluster three was developed, which includes four questions:

- To what extent is the Libyan government committed to the privatisation programme?
- Is it ready to implement the privatisation programme?
- How does it deal with structural issues related to privatisation such as financial, economic, legal, administrative and social issues that may cause the process to fail?
- What institutional changes has Libya introduced in order to fulfil the requirements of a successful implementation programme?

Since there are several requirements for a successful privatisation programme, as mentioned previously, this study discussed the conditions and requirements in different chapters in order to achieve the identified objectives, as above, and to answer the related questions. Accordingly, the findings obtained from these chapters are discussed in an integrative manner in the following sections.

9.4.1 Political Support for the Privatisation Programme in Libya

As stated in Chapter 3, political support is the foundation stone of the success of privatisation, which implies that privatisation and economic transformation begins with the belief of leaders and decision-makers that private ownership is better than

public ownership, and that SOEs have become a considerable burden on the public budget and should be privatised.

In Libya, as discussed in Chapter 4, the Libyan authorities realised the necessity of adopting reform policies to address the problems of the public sector through adopting some policies and issuing a series of resolutions and laws since the end of the 1980s to encourage the private investments, and have started privatising small and medium-sized public sector companies. However, the available data, as stated in Chapter 4, particularly in 4.5.5.1, showed that privatisation in Libya during the 1980s and 1990s failed to achieve its goals. It should be mentioned that the only method used to privatise all these companies was to sell the ownership to the workers and management. This method was adopted because some leaders and decision-makers in power still adhered to the socialist ideas that had been adopted in Libya for a long time; many of them in their statements and writings were arguing that this type of privatisation does not mean the adoption of the capitalist system but, rather, the expansion of the ownership base, enabling workers to own their companies.

Therefore, it seems clear that, although the government and decision-makers in Libya realised that the public sector had failed and state control over the economy had resulted in many problems, their adoption of just this method to privatise all these companies is a strong indication of the lack of desire and genuine commitment to privatisation and the transition to a market economy.

In 2001, the Libyan government established an institutional structure for privatisation, and developed a comprehensive plan, in 2003, to privatise 360 public companies. However, the delay in establishing the privatisation agency and developing the plan, as well as the confusion and uncertainty in the economic decision-making process, created serious doubts about the willingness and credibility of decision-makers and leaders in implementing the privatisation programme and the economic reforms in general. Furthermore, many other factors, as indicated in various chapters, such as the lack of clear constitutional and legal amendments, and the delay in reforming the financial and banking institutions, reflect the lack of commitment of policy-makers in Libya to these reforming policies.

Furthermore, the analysis of the answers in the interview section, as detailed in Chapter 8, showed that the majority of the interviewees stated that the confusion in economic policy-making, and thus the ambiguity in taking related decisions, created serious doubts about the willingness and seriousness of the Libyan authorities and decision-makers in implementing the adopted financial and economic reform policies.

In supporting the findings, answers given to the second question in the interviews aims, which exploring the participants' perspective on the nature of the economic system in Libya, and the willingness of former leaders and decision-makers to adopt market economic policies, showed that the majority believe that the economic system in Libya during the former regime was a mixed economy in spite of attempts to shift to a capitalist economy. Additionally, many participants believe that confusion and instability in the decision-making process during created an ambiguous picture about the nature of the Libyan economy. However, some participants, such as interviewees 4 and 6, stated that the Libyan economy can be described as socialist despite attempts by the government to involve private investors and companies in some sectors. They identify many factors that give the impression that the Libyan economy is a socialist economy, such as the state monopoly of key sectors, adoption of a central planning approach, weakness of the private sector, use of financial resources by the government to achieve social and political goals, and adoption of socialist objectives and ideas even in implementing the programme of privatisation of public SOEs.

In summary, it seems clear that decision-makers during the former regime realised that the public sector institutions had failed to achieve the desired goals, and it became necessary to develop solutions to solve the economic problems produced by the state's control of economic activity, and encouraging private investments. However, the results obtained in this research, both from the reports and analysis of related documents and from the interviews, show that, although the decision-makers in Libya tried to implement some reform policies, they did not show a clear desire and sufficient support for privatisation and the transformation to the market economy. Thus, it is difficult to state that there was a clear political will to move to a market economy beyond pragmatic expectations.

9.4.2 Transparent Implementation of Privatisation in Libya: Governance Issues

In Libya, as stated in Chapter 4, the government established the Privatisation Agency in 2001 with the aim of organising and privatising SOEs transparently, and reducing the possibility of corrupt bureaucrats influencing the programme. This body is responsible for implementing the entire programme, starting with the selection of candidate companies, evaluating assets, and choosing the method of privatisation. Moreover, the Libyan government formed a higher committee consisting of the prime minister and ministers from the other ministries concerned to control and supervise the implementation of the privatisation process.

These arrangements made by the government were positive steps that were supposed to be effective measures to ensure transparency in implementing the privatisation programme in Libya. However, as explained in detail in Chapter 4, results indicate that there were many problems in the Libyan experiment in this regard, such as the delay in establishing this independent body and creating the supervision committee; Libya's experience of privatisation, as mentioned earlier, started in the late 1980s and early 1990s, but the privatisation agency was only established in 2001, and the supervision committee was only formed in 2003. As stated in Chapter 4, this delay was one of the reasons for the failure of the first privatisation in Libya, which was characterised by poor organisation and management.

This situation certainly adversely affect the transparency of the implementation of the programme; hence, it had a strong negative effect on the satisfaction of stakeholders, be they workers in public companies, private investors, or society in general, thus creating strong opposition to the privatisation programme.

Moreover, even after the establishment of the independent agency in 2001, and the development of the comprehensive plan for privatisation in 2003, many public companies, factories and banks had been privatised by other government departments. This means that, even after the establishment of the specialised body, the implementation of the privatisation process was still carried out by many other means, which may have created great concern about the stability of the process and the transparency of transactions. In this context, many reports and information, as stated

in Chapter 4, indeed indicated that many corrupt transactions actually took place as a result of the privatisation of many public sector enterprises beyond the participation of the privatisation agency.

Furthermore, in question 8, the participants for the interviews were asked for their views on the performance of the previous government in the implementation of privatisation and economic reform policies. The majority stated that the previous government did not successfully implement the programme, although the privatisation programme is still in progress and early judgement might be unfair. Many of them believe that the confusion and lack of administrative stability, the absence of clear and transparent plans, and financial and administrative corruption in government departments are the main reasons for the failing or faltering privatisation and reform policies in Libya.

These findings are similar to many studies such as Kikeri and Nellis (2002) and Nellis (2007) which concluded that surveys exploring people's views on privatisation policies in many countries in Latin America revealed considerable opposition to privatisation as a result of the lack of transparency in implementing the programme and an increase in corrupt transactions.

Therefore, with respect to transparency, it seems clear that the previous government took some positive steps, such as establishing the privatisation agency and creating a supreme committee to oversee the programme, which were supposed to provide transparency in the implementation. However, corruption in government bodies, the absence of plans and clear strategies, and the lack of commitment by the previous government to implement economic reform programmes led to many corrupt transactions occurring in Libya's privatisation program; this created dissatisfaction and serious doubts about the success of the programme, as evidenced by the perspectives of the interview participants.

9.4.3 Mitigating the Social Impact of Privatisation in Libya

Former Libyan governments, as discussed in Chapter 5, realised the need to address the adverse social impacts of privatisation, and tried to develop policies and establish certain institutions for this purpose, both with regard to the problem of employees

laid-off from public sector enterprises or the issue of impact on consumer welfare. However, results obtained showed that there are serious deficiencies in addressing these concerns, which are discussed as follows.

9.4.3.1 Addressing the problem of employees laid-off

As mentioned in Chapter 4, the implementation of plans for economic and social development and the adoption of socialist ideas resulted in the accumulation of labour in the state economic institutions in Libya, which was one of the main reasons for the failure of the public sector.

At the beginning of the recent privatisation in Libya, in 2004, the Libyan government formed a central committee to oversee the development of policies to address the surplus labour in the public sector. In addition, the government delegated the Privatisation Agency to form sub-committees to study the conditions of workers in companies that were candidates for privatisation, as well as determining the need of these companies for workers. It should be noted that such studies were positive steps in the process of addressing the problem of surplus labour because the study of the conditions of employment and workers' qualifications may prevent the exit of qualified and skilled workers needed by companies.

However, results discussed in Chapter 5 showed that the treatment of surplus labour in Libya, at that time, was not successful; although the targeted staff did not exceed 13 thousand employees, the majority of them were transferred to other government institutions and departments, which only displaced the inefficiency as it meant the continuation of the burden on the public budget, especially since there was no real need for them in those departments.

After this period, the government began the privatisation of large companies, and started to prepare health and education institutions for privatisation. These sectors included a very large labour surplus; hence, the stage required the establishment of specialised institutions to deal with this surplus, rather than privatisation agency committees. These institutions and their performance in addressing the problem of surplus labour were discussed in detail in Chapter 5, and the findings were as follows.

9.4.3.1.1 National Centre for Training and Career Development:

As stated in Chapter 5, the National Centre for Training and Career Development was created in 2007, and was charged with addressing the problem of labour redundancies from the public sector through the setting up of training courses, skill evaluation of employees, paying their salaries, coordinating with related authorities and companies to re-employ workers, and coordinating with the finance institutions to enable workers to establish private projects.

The findings, as discussed in Chapter 5, show that the Centre failed to achieve these objectives. As a result of the disappointing outcomes, the government issued, in February 2009, a decision to dissolve this Centre, while emphasising that it is still committed to paying the salaries of these registered workers. The government explained that this decision was a result of administrative and financial corruption at the Centre and it had failed to address the redundancy issue.

9.4.3.1.2 Department of Labour and Vocational Training

As the discussion in Chapter 5 demonstrates, in April 2009, the Libyan government established a new specialised institution for dealing with employment issues in Libya, including the issue of workers laid off from the public sector by developing policies to address the employment problems in Libya, such as providing opportunities for job-seekers in foreign companies operating in Libya, and conducting training programmes for job-seekers and ex-employees of the public sector in order to reintegrate them into economic life. Therefore, it seems clear that this department adopted almost the same goals as the Centre, which had been dissolved by the government.

However, as discussed in Chapter 5, this department did not succeed in achieving the desired goals, as the training programmes conducted by the department could only accommodate about 0.5% of the total number of unemployed workers targeted and registered in this department. In addition, this department failed to implement other solutions and alternatives such as reintegration and helping laid-off workers establish small private businesses; this created a real problem both in terms of costs that burden the public budget as a result of paying the salaries of those workers, and in terms of creating uncertainty and dissatisfaction with the programme of privatising the public sector.

In summary, from the discussion it is clear that the Libyan government still faces real challenges in spite of the establishment of specialised institutions and attempts to develop plans to address the problem of redundancy.

9.4.3.2 Addressing the potential negative impacts on consumer welfare

As stated in chapter 3, the privatisation of SOEs, in some cases, may affect consumer welfare through the effect on the prices and quality of goods, but also due to the state's reduced role in the economy and the reduction or elimination of subsidies provided through state-owned enterprises.

The Libyan government took a series of measures in this regard, as discussed in Chapter 5, in section 5.3.1 in particular. Regarding the policy on subsidies, the Libyan authorities took several measures including a policy of gradual reduction of subsidies, only cancelling subsidies on certain goods, while continuing to subsidise many of the goods and services necessary for citizens. It should be noted here that these measures may help in protecting some of the poor segments of society; however, they conflict with the objectives of privatisation and economic liberalisation, because such policies could undermine competition and the ability of the private sector to engage in markets for goods and services subsidised by the state.

As the discussion in Chapter 5 indicates, the former Libyan government gave explicit attention to some potentially negative social impacts of privatisation, and undertook a set of procedures to mitigate these impacts, such as a policy of gradual reduction of subsidies, an increase in salaries, and the establishment of a 'Fund for Price Balancing' to intervene in urgent circumstances to protect consumers from rising prices. In addition, it developed an investment plan, through the Economic and Social Development Fund, to compensate low-income people. However, the government should take into account the need to address the living situations of citizens who are not covered by this programme and are paid salaries below the poverty line in Libya. In addition, the relevant authorities took several regulatory and legal measures to protect consumers in the Libyan market, such as issuing resolutions stating the need to establish independent bodies to protect the consumer, as well as passing a law to promote competition and providing for the establishment of a competition council.

However, these arrangements have so far not been activated and the regulative institutions have not been established.

In this regard, the analysis of responses given to question 7, as detailed in Chapter 8, showed that the majority of participants believe that the previous government paid explicit attention to these problems. However, there were many shortcomings in the implementation, and these have prevented the government from achieving the desired goals of the adopted arrangements and procedures.

Many participants stated that the former government undertook appropriate policies and procedures that were supposed to address these social problems. However, they argued that the financial and administrative corruption and the weakness of the private sector hindered the achievement of positive results from these policies. On the other hand, negative results, especially with regard to the redundancy and employment issue, caused doubts and uncertainty among many of the participants about the appropriateness and effectiveness of the policies adopted to solve these problems.

In summary, from the discussion and the findings, it can be concluded that the Libyan government tried to develop solutions to tackle the social problems resulting from privatisation by adopting various policies, establishing certain institutions for this purpose, and making several legal arrangements. Although the government has achieved some positive results, especially regarding the compensation of some groups in society, there are many real challenges still facing the Libyan authorities, particularly with regard to the problem of workers laid off from public sector enterprises; this could create strong opposition by workers, leading to a delay in the privatisation and reform process as a whole, as occurred in some countries such as India and Mexico (Gupta *et al.*, 2001). Moreover, findings show that the former Libyan government did not pay sufficient attention to the legal and regulative arrangements for competition and consumer protection in the Libyan market.

9.4.4 Creating an Appropriate Financial and Economic Environment in Libya

As previously discussed, creating an economic and financial environment suitable for privatisation and economic reform policies is one of the most important requirements for the success and achievement of the desired objectives of these policies. In line

with this, the former Libyan government, as stated in Chapter 6, took many measures to develop the business environment for privatisation, including policies to liberalise the market, the imposition of hard budget constraints to stimulate competition in the market, reform of the banking sector, and establishing a securities market.

Regarding market liberalisation, the Libyan government adopted a commercial policy, from 2002, for the liberalisation of external and internal trade, which had been dominated by state enterprises for decades. However, as stated in Chapter 6, there were many problems and shortcomings in implementing this policy.

At the internal trade level, many decisions have been taken for price deregulation and phasing out of the mandatory pricing system which had been applied for decades in Libya. However, a very large number of goods are still subject to the pricing system, which is totally incompatible with policies aimed at the transition to a free economy governed by the forces of demand and supply. The continuation of this policy under the pretext of lack of competition and the lack of effective law protects consumers and prevents monopolistic practices in the Libyan market. It should be mentioned that this situation could affect the Libyan market, as demonstrated by experiences elsewhere; in Ukraine for example, in 1994, the government's delay in implementing the deregulation process created an inflationary trend in prices and, hence, adversely affected the stability of the market because price deregulation is usually accompanied by a rise in prices. It also discouraged the private sector from participating in economic activities (Dabrowski, 1996).

In this context, it should be indicated that, recently, in 2010, the Libyan legislative authority passed a new law on commercial activity, including a set of provisions to prevent monopolistic practices and protect the consumer, in order to cancel the mandatory pricing system. However, this law has not yet been activated; moreover, the competition council, which will monitor and enforce the provisions of the new law, has not yet been created.

Furthermore, as stated in Chapter 6, the Libyan government undertook clear efforts to remove obstacles to market entry and to facilitate the private sector's contribution to the economy; the relevant authorities issued many laws that allowed and encouraged the private sector to participate in various forms of economic activity. Moreover, the

government established specialised departments and issued a series of decisions in order to simplify administrative procedures for the licensing and registration of private companies. However, findings showed that there are still a few difficulties related to certain regulations, such as requiring LD 100,000 as minimum capital to establish a joint-stock company, which could be an obstacle to the willingness and ability of private investors to engage in business, especially in light of the problems in the financial sector and the inability of the private sector to access funding sources, as many participants stated in the interviews conducted for this research.

Regarding external trade, the Libyan government took several measures relating to exports, imports and exchange rate policy to liberalise external trade as part of market liberalisation; it removed all quantitative and administrative restrictions on exports, except on a very small number of products that are much in demand in the domestic market. In addition, the government established a specialised Centre and issued a series of decisions that to encourage exporters and develop export activity. Furthermore, the Libyan government put efforts to adopt liberalisation policies as a reform including the abolition of quantitative restrictions on imports, and the abolition of the import budget system, as well as narrowing the scope of the monopoly of imports, except for a very limited number of goods for security and health reasons. Moreover, many procedures were undertaken relating to exchange rate policy, including linking the Libyan dinar with Special Drawing Rights (SDR) at an exchange rate appropriate to the economic situation and to eliminate the black market in Libya. Additionally, the government issued decisions to abolish restrictions on foreign exchange and remittances, which contributed to the liberalisation of trade and stimulated competition in the Libyan market. It should be noted that past experience, as stated in Chapter 3, has proved that liberalisation policies are essential for successful privatisation policies; in Poland, for example, the privatisation programme faced some difficulties in the beginning due to the inability or unwillingness of the private sector to become involved. However, by adopting liberalisation policies the private sector was strongly encouraged and competition increased in all sectors of the economy.

With respect to the imposition of hard budget constraints, as stated in Chapter 6, the former Libyan government adopted several procedures that made progress in

preparing the general budget, which may improve public finance management and simplify and facilitate the control of government expenditure. However, many issues, such as allocating large amounts to investment funds and specialised public financial institutions that operate outside the general budget, may create uncertainty about the finances of the government; moreover, these institutions may fall under government pressure and be used as a tool to support and subsidise loss-making companies or certain sectors. Accordingly, this approach could harm competition in the Libyan market and adversely affect the ability and willingness of the private sector to engage in economic activity, which is inconsistent with the objectives of privatisation and economic reform policies. In several countries, as stated in Chapter 3, such as Turkey for instance, in early privatisation attempts the government continued to subsidise loss-making companies in the portfolio of privatisation, which led to many problems such as continued inefficiencies, fiscal drain, and the unwillingness and inability of the private sector to become involved in some sectors. In contrast, in the Polish experience stopping subsidies and enforcing hard budget constraints were significant aspects in the success of the privatisation process.

Furthermore, the monetary authorities in Libya adopted several procedures to reform the banking sector, which may help the economic reform programmes to succeed. These measures include the restructuring and privatisation of public commercial banks, which is supposed to be an effective solution to the problem of excessive government subsidies provided for public or newly privatised companies. Moreover, as discussed in Chapter 6, the monetary authorities in Libya adopted many measures, including establishing private banks and allowing the entry of foreign banks, that are supposed to play an important role in stimulating competition, thereby improving the efficiency of the banking sector in Libya. In addition, a series of measures were taken to provide the commercial banks with more flexibility in terms of credit and investment policies; this helps to stimulate competition among commercial banks on the one hand, and contributes to the financing and promotion of the private sector to engage in economic activities on the other. However, as stated in Chapter 6, the role assigned to the specialised public banks in Libya, which do not operate under the direct supervision of the Central Bank, may adversely affect the policies adopted to reform the banking sector. In addition, these specialised public banks, as stated in

Chapter 6, could be exposed to government pressure to provide subsidies or non-commercial loans for certain companies or sectors; thus, they might adversely affect competition in the banking sector on the one hand, and adversely affect the performance and efficiency of companies operating in the Libyan economy on the other hand, which means that results may be completely incompatible with the objectives of the programmes of privatisation and economic reforms. Past experience, as stated in Chapter 3, has proved that reforming and privatising the banking sector early in the process of transformation, in many transitional countries such as Poland, Hungary and Estonia, were significant factors in the success of privatisation in those countries. In contrast, in the Czech Republic in the 1990s, the government continued to grant loans and financial services for newly privatised companies through the public banks, even for weak and loss-making companies; this negatively impacted on the competitive environment in the economy and failed to improve the companies, as well as dramatically affecting the financial capacity of the banking sector.

The Libyan government established the Libyan Stock Market and developed all its rules and regulations. As stated in Chapter, an organised stock market is one of the main conditions for efficient privatisation as it is considered an effective monitoring tool to encourage managers to improve the performance and efficiency of private enterprises. In addition, stock markets enable owners to transfer their property and monitor the performance of managers through the prices of the stock in the market. These conditions are significant advantages of private property, as stated in the theory of property rights and the agency theory. Furthermore, the stock market is important in implementing the privatisation process itself, as the sale of public enterprises' shares through stock markets is considered one of the most desirable ways of contributing to the development of the financial sector. Past experience, as stated in Chapter 3, proved that the lack of organised and active stock markets, in many developing and transitional countries, was the main reason for adopting ineffective methods of privatisation that led to disappointing results. In Russia, for example, due to the lack of a stock market the government adopted specific methods of privatisation, such as privatisation for workers and management and the mass privatisation approach, which negatively affected privatisation results because of the difficulty of monitoring the performance and behaviour of managers, and the lack of

capital and necessary skills, which are the main elements in the development and improvement of enterprises.

Although, it could be argued that stock markets are not expected to play a significant role in a privatisation process, in many developing and transitional countries, where stock markets are often underdeveloped or weak, many studies, as mentioned in Chapter 3, have concluded that privatisation of public sector companies is a major factor in the development of stock markets, even though they may be weak initially. In the Libyan case, as stated in Chapter 6, many studies have proved that the privatisation programme, whether in the first round, which began in the late 1980s, or the more recent measures which began in 2004, faced difficulties due to the absence of many of the fundamentals for the effective implementation, such as a stock market, a vibrant private sector, and the data and information needed by private investors (Hamdo, 2004; Paddy and Zwai, 2005). Due to the absence of a stock market, the Libyan government was compelled to privatise the majority of public enterprises, especially during 1980s and 1990s, through privatisation of management and employees, which was the main reason why privatisation failed to achieve an improvement in the efficiency of the privatised companies in that period (Shernanna and Alfergani, 2006; Tapoli, 1997; Hamdo, 2004; Paddy and Zwai, 2005).

Accordingly, the Libyan government realised that the establishment of the stock market was essential for developing the financial market and implementing the privatisation programme effectively. In 2005, the government issued a resolution to establish the Libyan Stock Market, which has gradually developed over the year through transactions but also by substantiating it with the necessary regulative and legal environment including the Capital Market Authority.

However, there are still some problems related to the Libyan Stock Market, such as the delay in issuing the Capital Market Law and creating an independent supervisory department, which may affect the investors' confidence and the integrity and transparency of the stock market; although the law was passed in 2010, the supervisory department has not yet been established. Thus, the government should speed up the process of creating this body to ensure the creation of a suitable

environment for the trading of securities, which is supposed to facilitate the privatisation of SOEs, as well as developing the private sector in the Libyan economy.

In the interview survey conducted in this research, as stated in Chapter 8, the analysis of the responses indicates that Libya has not had the appropriate economic and financial environment for an efficient privatisation and transition to a market economy during the former regime, although many arrangements and policies have been adopted lately in order to create this environment. Some of the interviewees stated that the former government adopted many policies to improve the business environment, relating to liberalisation of the market, encouraging private investors, reforming the banking sector and establishing the stock market. However, the majority indicated that many problems were hindering the proper economic transformation, such as the continued state intervention in economic policies, ambiguity in monetary and fiscal policies, administrative and financial corruption, problems in financing the private sector, and the weakness of the capital market that delayed the development of the private sector.

Therefore, results obtained from Chapter 6 and the interviews in Chapter 8 demonstrate that, although many positive procedures were implemented by the former regime, many difficulties and challenges still face the new Libyan government in developing an economic and financial environment appropriate for privatisation and economic reform policies to ensure the achievement of the desired goals.

9.4.5 Creating the Appropriate Legal Framework for a Market-Based Economy in Libya

As stated in the earlier chapters, one of the most important requirements for efficient privatisation, especially in transitional countries, is the creation of a comprehensive legal and regulative framework, which should include laws encouraging the private sector and hence private property, instilling confidence among investors and all market participants, and creating an appropriate environment for fair competition, as well as a proper framework for an efficient corporate governance structure.

Accordingly, in this research, the appropriateness of the legal environment for the economic transformation in Libya was discussed in detail in Chapter 7, including several important legal issues such as the protection of private property, legitimacy of

privatisation, competition law, and the legal framework of the efficient corporate governance structure.

The main results obtained from analysis of the Constitution in Libya showed that the constitutional provisions in force until 2011 stressed that private property is protected and inviolable and may not be taken away except in accordance with the law and with fair compensation. However, private property as stipulated in the constitutional documents must be non-exploitative. In other words, it must have resulted from the efforts of the owner, without exploitation of the efforts and needs of others. This condition, which seems socialist in nature, was the main reason for issuing many nationalisation laws and regulations restricting private property in Libya, and it adversely affected the confidence of the private sector, both foreign and domestic, and its ability and willingness to contribute to economic activities. Therefore, as stated in Chapter 7, attempts by the Libyan legislative authorities to issue laws providing for protection of private property could be a positive step to encouraging investment and stimulating the private sector. However, they might be insufficient in the presence of the constitutional provisions that restrict private property.

Regarding the legitimacy of the privatisation process in Libya, as stated in Chapter 7 the Libyan authorities have issued a variety of legislation since the 1990s that may form a legal basis for the privatisation of SOEs. However, the constitutional provisions in force until 2011, namely until the fall of the regime, stipulate that the economic system in Libya is a socialist system. Accordingly, this system is incompatible with privatisation as a means of shifting towards a market economy. Thus, the issuance of a unified constitution protecting private property and containing the foundational base of a new economic system which relies on the private sector and the free market mechanism is an essential requirement to remove any ambiguity in restoring private sector confidence in Libya, and to give legitimacy to the process of privatisation and the transition to a market economy in aiming at an efficient capitalist economy.

In this context, as stated in Chapter 7 the Libyan authorities, with their adoption of economic reform policies in 2003, attempted to issue a unified constitution guaranteeing all rights of citizens. However, the resistance of some actors in the

government, who still adhered to the socialist position, had hindered the issuance of this constitution until 2011. However, in August 2011, following the recent political change in Libya, the Transitional National Council issued a new constitutional proclamation which indicated that a new Libyan Constitution would be issued in the coming months, which, thus far, has not been issued.

Thus, this might be an appropriate time to ensure that private property is confirmed and constitutionalised with the objective of clarifying the parameters of the economic system, which should be reliant on the private sector and market mechanism, especially after the change in political system, which is diametrically opposed to socialist ideas and aims at transforming and reforming the Libyan political, business and social environment.

In responding to such issues, the analysis of the interview questions in Chapter 8 showed that, while some of the interviewees stated that it is difficult to anticipate what the new Constitution might include, the majority of them wish and expect it to include explicit articles setting out market economy rules to address the distortions and problems in the Libyan economy.

Regarding the competition law in Libya, as stated in Chapter 7, the legislative authorities delayed issuing a law protecting competition in the Libyan market, as the government, since the 1990s, had started to privatise SOEs and issue several laws that would encourage the private sector to contribute more to economic life. However, before 2010, the relevant authorities had not issued a competition law that aimed to prevent any monopolistic actions; this could be attributed to bureaucracy or the lack of enthusiasm by some actors in the Libyan government to implement the changes and economic reforms; in addition to the delay in the issuance of this important law, the government had not issued any executive regulations, nor had it established the competition council identified in the law.

Concerning the legal framework of the efficient corporate governance structure, as stated in Chapter 7, the legislative authorities in Libya issued several laws covering most of the key principles of the structure of corporate governance: such as the Capital Market Law, which includes many articles that ensure high-quality disclosure and transparency in Libyan companies. However, as indicated in Chapter 7, the

legislative authorities were late in issuing these laws; they were only issued in 2010 and are still not in force due to the delay in the issuance of executive regulations. Thus, the discussion in Chapter 7 concluded that speeding up the activation of these laws is urgent to build a legal structure in line with the economic transformation, and also to build an effective structure of corporate governance that will help to encourage investors and protect the rights of shareholders and stakeholders, as well as providing appropriate conditions to improve the efficiency and performance of private companies.

Furthermore, in the interview survey analysis showed that Libya has not had an appropriate legal environment for an efficient privatisation and transition to a market economy, although several arrangements were made by the former government and many laws were issued by the legislative authorities to create this environment. Some of the interviewees stated that the Libyan legislative authority has lately issued a number of important laws such as investment law, labour market law, and the new Commercial Law which regulates all acts and practices of the private sector. However, the majority of the interviewees argued that many problems had resulted in the inappropriateness of the legal and regulative environment for an efficient privatisation and transition to a market economy, such as the instability and conflicting nature of the laws, the constant intervention by the state, the influence of socialist ideas, and the lack of a unified Constitution.

Therefore, findings related to the issue of the legal environment proved that there are several difficulties in the legal environment both in terms of constitutional provisions and the instability and ineffectiveness of laws issued by the former regime. However, many laws recently issued are very important for creating the proper legal environment. In addition, according to the constitutional proclamation and the expectations of the interviewees, the new Constitution, following the recent political change, is expected to address the shortcomings of the old legislations.

9.5 REFLECTING ON THE LIBYAN ECONOMY AFTER THE RECENT POLITICAL CHANGE

Following the recent regime change in Libya, it is very important to explore developments that may occur in relation to the economy and business environment in

Libya with the objective of locating as to whether the new Libyan government is moving towards a market economy. Such developments are essential in providing the necessary conditions for successful privatisation and economic transformation policies, discussed earlier.

The last part of the interviews conducted for this research aimed to explore the perceptions and expectations of participants about the direction of the Libyan economy following the political change by exploring their views about the economic understanding of the new government, changes expected in economic policy and changes in the constitutional provisions and legal environment.

As stated in Chapter 8, analysis indicates that, although a few participants mentioned that would be difficult to predict the new Constitution, the majority wish and expect the new Constitution to include clear Articles providing for a market economy.

Many of the interviewees stated that the officials' statements and the constitutional proclamation issued recently provided a signal that the new Constitution will include provisions providing for the adoption of a market economy system. Moreover, many of them stated that, because of the failure of socialist ideas and the serious problems resulting from the large public sector and state dominance of the Libyan economy, there will be strong motivations for the constitutionalisation of the market economy. Thus, they believe that such provisions are definitely needed to address and avoid the distortions and problems observed in the Libyan economy.

In regard to exploring the perspectives of the interviewees on the economic policy understanding of the national transitional government (NTG), as stated in Chapter 8, the analysis showed that, although many interviewees stated that the understanding and directions of economic policy are not clear, as this government is a transitional government and its functions are limited in some interim issues, others believe that the statements and resolutions issued so far indicate that the new government favours the free market, and that the Libyan economy has been moving towards a market economy.

Furthermore, in this context the statements of many officials indicate the need to adopt proper policies to encourage the private sector to participate more in the Libyan

economy. For instance, Jibril (2012), the head of the interim government during the period of the revolution in Libya, stressed that developing clear provisions in the new Constitution to protect the rights of the private sector is essential to build confidence between private investors and the state. Moreover, he stated that the private sector should play a greater role in the Libyan economy, and the relevant authorities should facilitate its contribution by adopting several policies in this regard, such as encouraging the banking system to provide the financial resources, and by reaching agreement with foreign companies to participate with the Libyan private sector in the reconstruction stage (Jibril, 2012).

Moreover, the Governor of the Central Bank of Libya (Al Kaber, 2012) stated that the former banking laws are under amendment in order to encourage and support the private sector to participate more effectively in the economic growth in Libya. He indicated that the main objective of this amendment is to support the private sector, in addition to the application of the international banking laws to create a suitable investment environment that encourages investors to enter the Libyan market. He also declared that, due to many requests made by banks currently operating in Libya to develop Islamic banking, the Central Bank of Libya is working to establish a legal framework within the new amendments with the objective of defining the working mechanisms of Islamic banks.

Moreover, Karod (2012), the general manager of the Libyan Stock Market, stated that the capital market policies in the next phase will be different and more encouraging for domestic and foreign investors. He indicates that it is necessary to establish investment funds and create investment channels to encourage foreign investors to participate in the stock market in Libya. He declared that the Board of Directors of the Libyan Stock Market is planning to establish an investment fund in line with Islamic sharia law as such funds would encourage domestic investors as well as attracting the attention of investors throughout the Islamic world.

It can be seen from the analysis of the interviews and from the statements of the new Libyan authorities the Libyan economy is moving towards a market economy.

As the majority of the interviewees stated that the Libyan economy should be further liberalised and privatised to address the many financial and economic problems

resulting from state control and the domination of the public sector. Moreover, many of them indicated that past experience proved that the state had failed to provide all the services and goods needed by the citizens; thus the state should act as a regulator, creating a competitive environment, activating the necessary laws, and developing suitable plans and strategies to encourage the contribution of the private sector.

On the same issues, some interviewees stated, on the other hand, that although the new government should continue to adopt privatisation and liberalisation policies, several sectors and projects that operate in low-competition environments, such as electricity, telecommunications, transportation and water, should continue to be governed and supervised by the state until an appropriate environment is created for the successful transformation. In their responses, they argued that privatisation of such sectors before the development of a capable private sector and the creation of a well-organized and competitive business environment would negatively affect Libya's economic stability and consumer welfare in Libyan society.

Therefore, it can be concluded from the interviewees' answers that they would prefer further privatisation in the Libyan economy to address the problems of the public sector; however, it is clear that they believe that, without the provision of certain conditions, the results of the programme would be unsatisfactory.

On reflecting on the re-building of Libya, as the analysis in Chapter 8 indicates, all participants thought that the state would be the financier for reconstruction projects, while the implementation task would be taken on mostly by foreign companies, with the possibility of the involvement of some local private sector companies in certain areas. Accordingly, interviewees expected that the role of the state in the economy would not increase; hence, they do not expect an expanding public sector in Libya at this stage. Many of them felt that the private sector in Libya is still weak, and the public sector enterprises do not have the ability to implement these projects; hence, it is strongly expected that foreign companies will play a key role in the reconstruction phase in Libya. Moreover, some of interviewees stated that, as many contracts had been signed with foreign companies and many projects had already started before the revolution in February 2011, these contracts would simply be reactivated for the resumption of development projects.

Therefore, it seems clear that the state will act as financier only in reconstruction and infrastructure projects, which means that the public sector will not be expanded again in the Libyan economy. These expectations indicate that, in the coming stage, the Libyan economy will rely more on the private sector, both domestic and foreign, which means that the new authorities will need to provide the financial, economic, legal and regulative conditions required for the market economy.

It should, however, be noted that, since Libyan society is a rentier society and, hence, the rentier mentality prevails heavily in society, the democratic process may yield to the demand from society to once again produce a rentier mentality in society, economy and politics through different agents. This is something that this fresh start should not allow. However, as the tendency to respond to popular demand, i.e. popularism, is very prevalent in democratic societies, this may be a cause of anxiety in terms of the nature of the political economy that is developing in Libya.

9.6 CONCLUSION

Findings of the study proved that state domination in Libyan economy and the control of public sector, for several decades, resulted in disappointing consequences. Accordingly, privatisation of SOEs and reforming the Libyan economy were essential policies. However, findings obtained from this research proved that there are many difficulties facing privatisation policies in Libya, which could prevent achieving the desired objectives of privatisation and reforming policies. The lack of some financial, economic and legal conditions, during the former regime, had affected adversely the privatisation process in Libya, whether in the first round in 1990s or the second in 2004. The unavailability of some requirements resulted in discouragement of the private sector to engage in the program; which forced the government to adopt specific methods of privatisation such as management and employees buyout, which has many disadvantages on the post-privatisation performance. In addition, these difficulties adversely affected the participation of private investments in the Libyan economy; hence the competition in the market would be effected, which undoubtedly affect the desired goals of privatisation; as these conditions will prevent achieving the efficiency of privatised enterprises from one hand, and would produce adverse impacts on the consumer welfare on the other. In addition, inability of governments of

previous regime to deal properly with some core concerns such as redundancy in the public sector is one the major problems that face the efficiency of privatisation; as this could lead to achieve some financial and economic advantages at the cost of social and welfare objectives. Furthermore, findings show that there many difficulties in the legal and regulative aspects, especially with regards to non-activation of main laws that issued recently. These shortcomings could hinder the success of privatisation of public sector, especially in some uncompetitive sectors, causing negative impacts of privatisation policies.

The new regime, however, has a different vision towards the market based economy, and it is predicted to be more supportive for privatisation policies. The Libyan transitional government could need some time to deliver all requirements for efficient privatisation; many economic, legal and constitutional requirements are expected to be produced in next coming months. However, the problem of laid off employees are still considered as a main concern and challenge in front of privatisation policies, since the number of employees laid off from the public sector in the previous privatisation experience is very large. Since the private sector in the Libyan economy is still undeveloped and weak to absorb them, the success of the new regime is also depending on job creation and tackling with the redundancies made due to privatisation in the previous period. It is feared that due to electoral reasons, the democratically elected governments may also opt using SOEs to provide jobs through patronage networks, as it was under the previous regime.

CHAPTER 10

CONCLUSION AND RECOMMENDATIONS

10.1 SUMMARY OF THE RESEARCH

Privatisation has become an important area for theoretical and practical research since mid-1980s, as a response to the problems and disappointing performance of dominant public sector enterprises in 1970s and 1980s. In particular, the Washington Consensus process facilitated the expansion of privatization policies all over the world as part of economic reform and liberalization policies.

While privatisation has been suggested as a prescription for the problems of the public sector, the effectiveness and success of such policies is dependent on a number of conditions. It should, therefore, be noted that, although policies of privatisation and the transition to a market economy have achieved many positive results in many countries, numerous experiments have proved that serious problems could result from privatisation unless several key conditions are met to ensure effective application. These conditions include creating an appropriate financial, economic, administrative and legal environment to ensure the success of privatisation and economic transformation. Therefore, this study aimed mainly to explore and assess the adequacy of these conditions or business and legal environment in Libya for privatisation and, hence, a market economy.

This study was initially constructed as a primary data based research. However, the political upheaval in Libya just before undertaking the field research resulted in shifting the data collection strategy to secondary data. In collecting the secondary data, this study mainly relied on a literature review and theories related to privatisation, as well as on previous experience in many developing and transitional countries, which have economies somewhat similar to the Libyan economy, with the objective of exploring and identifying the most important requirements for successful privatisation. Furthermore, in order to achieve the main aim of this study, which is to explore and evaluate the Libyan financial, economic, administrative and legal environment, secondary data were collected from various documents including laws,

financial, economic and legal reports, state resolutions related to the topics in question, and also institutional reports. In addition, in order to substantiate the results from textual and discursive analysis, and also to reflect on the recent developments of the post Arab Spring period, structured interviews, which targeted a group of specialists and academics in Libya, were conducted to gather primary data on the main issues related to the experience of privatisation and economic transformation in Libya as well the future economic expectations. This was possible due to the fact that when the secondary data analysis completed, the revolution was already completed in Libya and the transitional government moved in to administer the country. Therefore, this opportunity was taken up by this study to reflect on the impact of constitutional democratic futures on the Libyan economy in general and privatization related issues in particular.

This research, hence, used different data analysis methods such as document analysis for the reports and other documents. In addition, content analysis was utilised to analyse the laws, constitutional provisions, documents, and legislative documents. In addition, coding analysis was used to analyse the data obtained from interviews conducted for this study. Thus, in terms of research methods, triangulation is the main thrust of this research. As a result, this study reached a number of findings that formed the answers to the research questions set in advance in Chapter 1 whereby the aims and objectives of this research are fulfilled.

The following sections, thus, present the most important findings of this research. Secondly, the contribution and importance of this research is also presented. Thirdly, a set of recommendations for policy-makers in Libya is proposed, which is followed by presenting the limitations and difficulties of this research as well as proposing future studies in this area.

10.2 MAIN FINDINGS OF THE RESEARCH

After conducting a robust qualitative analysis, this research drew a number of significant conclusions about the privatisation policy and economic transformation in Libya. The most important of these findings can be summarised as follows:

(i) In regard to the rationale for privatisation, the opinion developed from the literature review and related theories indicates that privatisation is preferable for many reasons: providing better management, incentives and reward systems, protecting the public resources and public companies from the exploitation of self-interested politicians and bureaucrats, stimulating competition among economic institutions, improving the performance and efficiency of these enterprises, and addressing the financial and economic problems produced by the public sector and state control of economic activity. This does not imply that privatisation is not without problems; in particular in transitional economies, the rise of crony capitalism is a serious issue, preventing the emergence of all the positive expectations.

(ii) As the results show the Libyan economy has been heavily dependent on oil to finance the development projects, and, therefore, has relied greatly on the public sector to implement these projects with the objective of achieving development and self-sufficiency. In addition, the socialist ideology, adopted in Libya since 1970s, was a key factor in the expansion of the role of the public sector in the Libyan economy.

(iii) The analysis in this study shows that the Libyan public sector achieved certain successes initially, including increasing the contribution of non-oil sectors to GDP, establishing numerous major infrastructure projects in many areas, establishing many factories and institutions that produce many goods and services. In addition, the public sector retained a key role in creating jobs and improving the incomes of individuals. Thus, the economy largely revolved around the public sector due to the main structure of the political economy of Libya under the Gaddafi regime being socialist.

(iv) As discussed in the preceding chapters, state control and overexpansion of the Libyan public sector have generated several disadvantages in the economy, such as inefficiency in allocation of economic resources, the failure to diversify sources of national income or finding a substitute for oil, mismanagement of the public companies, surplus labour, continuing losses, and the accumulation of debt in the Libyan banking sector. In addition, the public sector enterprises had significant problems such as inefficiency, low productivity, and an inability to achieve

profitability. Hence, its inability to compete or survive without support and subsidies from the government resulted in a burden on the public budget year after year.

(v) Research and interview findings show that the Libyan government, in the late 1980s and early 1990s, adopted policies to reform the public sector, including the privatisation of state-owned companies. These policies aimed at improving the efficiency and productivity of economic enterprises in the Libyan economy with the objective of connecting the Libyan economy to the global economy.

(vi) The examination of many international studies and experiments related to privatisation revealed that, for privatisation to be successful, there are many conditions or requirements including political will and support, efficient governance in terms of transparency in the implementation of the programme, and mitigation of the social effects that may accompany the privatisation of public institutions such as reduced employment in newly privatised companies and potential impacts on the prices and quality of goods and services in the market.

(vii) As the survey of the existing body of knowledge indicates, in addition to the above-mentioned requirements, further arrangements and measures should be taken into consideration for the success of the privatisation process: creating an appropriate economic and financial environment for the market economy, including policies for market liberalisation, enforcement of hard budget constraints, reforming the banking sector, and establishing an organised stock market. In addition, creating an appropriate legal framework including protection of property rights, developing a competition law, establishing institutions enforcing the competition law and developing a legal framework for an efficient corporate governance structure are essential institutional developments needed for the successful implementation of privatisation policies in transitional countries such as Libya.

(viii) It should be noted that the Libyan privatisation programme started in the late 1980s and then halted in 1994, as it failed to achieve its goals for many reasons such as mismanagement of the programme, the lack of political conviction and support, and the lack of an appropriate environment. However, the second round of privatisation in Libya started in 2001 with the establishment of a dedicated Privatisation Agency and the development of a comprehensive plan in 2003.

(ix) This study examined the political support for privatisation policies in Libya. Although decision-makers in the former regime realised that the public sector institutions were failing to achieve the desired goals, and tried to implement some reform policies, they did not show a clear desire and sufficient support for privatisation and the transformation to a market economy. This is due to the fact that the particular political economy favoured by the elite required a large public sector in Libya so that the patronage system and social welfare could be sustained for the survival of the regime. In other words, rentierism at the bureaucracy to sustain the administrators and bureaucrats and also sustaining the rentier mentality through distribution in the society meant that privatisation should not seriously be considered.

(x) With regards to the requirement for good governance practice in terms of transparency, although the governments of the previous regime took some positive steps by establishing the Privatisation Agency and creating a supreme committee to oversee the programme; corruption in government bodies and the absence of clear plans and strategies led to the emergence of several corrupt transactions in the privatisation programme in Libya, creating dissatisfaction and serious doubts about the success of the programme.

(xi) The research findings demonstrate that in regard to the redundancy problem caused by the change in the ownership structure of the state-owned enterprises, the Libyan government still faces real challenges, although specialised institutions have been established and attempts made to develop plans to address this concern.

(xii) The study found that the former Libyan government paid explicit attention to some potentially negative social impacts of privatisation, and undertook a set of procedures to mitigate the impacts on consumer welfare. However, there have always been some shortcomings especially with regard to compensation procedures and activation of legal measures to protect consumers in the Libyan market.

(xiii) Findings obtained from document analysis and the interviews evidence that although many positive procedures were implemented for efficient privatisation by the former regime; many difficulties and challenges are still facing the new Libyan government in developing an economic and financial environment appropriate for

privatisation and economic reform policies to ensure the achievement of the desired goals.

(xiv) Regarding market liberalisation, the study reveals that the former Libyan government undertook clear efforts, in terms of internal trade, to remove obstacles to market entry and facilitate the private sector's contribution to the economy. However, findings showed that there are still a number of difficulties and shortcomings that should be taken into account, especially with regards to regulations governing the activities and contribution of the private sector.

(xvi) The research findings in this study show that the Libyan government took several significant measures related to exports, imports, and exchange rate policies to liberalise external trade as part of market liberalisation, which is essential for efficient privatisation.

(xvii) The study found that the former Libyan government adopted several procedures regarding the imposition of hard budget constraints. However, several concerns, such as allocating large amounts to investment funds and specialised public financial institutions that operate outside the general budget, harmed competition in the Libyan market and adversely affected the ability and willingness of the private sector to engage in economic activity, as these funds and institutions may fall under government pressure and may be used as a tool to support and subsidise loss-making companies or certain sectors.

(xviii) The findings in this research revealed that the monetary authorities in Libya, during the former regime, adopted several procedures to reform the banking sector, which may help the economic reform programmes to succeed. However, the specialised Libyan public banks do play an important role in the Libyan economy that may adversely affect the policies adapted to reform the banking sector, as well as affect the competition in the market.

(xix) As identified by this study, the Libyan government established the Libyan Stock Market and laid down its rules and regulations, which should be considered as an important cornerstone in the reform of the economy towards a market economy. In addition, document analysis showed that the listing trading volume in the Libyan

Stock Market clearly developed gradually through a linear trend during the period 2006-2010. However, findings showed there are still some problems related to the operation of the Libyan Stock Market, such as the delay in issuing the Capital Market Law. Furthermore, failure to create an independent supervisory department may affect the investors' confidence and the integrity and transparency of the stock market.

(xx) With regards to the Libyan legal environment, the analysis in this study revealed that the former Libyan legislative authorities attempted to encourage investment and stimulate the private sector by issuing laws providing for protection of private investment and property. However, these laws may be insufficient as there have been constitutional provisions restricting private property and stipulating that the economic system in Libya is a socialist system implying that the political economy of the country did not allow even a pragmatist attitude towards privatisation.

(xxi) Findings of the study showed that the legislative authorities issued several important laws such as the Competition Law, which aims to prevent any monopolistic actions in the market, the new Commercial Law, which covered most of the key principles of the structure of corporate governance, and the Capital Market Law, which includes many articles that ensure high-quality disclosure and transparency in Libyan companies. However, findings showed that the legislative authorities were late in issuing these laws, as they were only issued in 2010 and are still not in force due to the delay in issuance of executive regulations.

(xxii) Findings from the analysis of the interviews and from the statements of the new Libyan authorities revealed that following the recent political change in Libya, the new Constitution is expected to include clear articles for the provision of a market economy.

(xxiii) Findings from the analysis of the interviews and from the statements of the new Libyan authorities gave a clear indication that the Libyan economy is moving closer to becoming a market economy. In addition, findings showed that, even in the reconstruction stage following the revolution, the Libyan economy will rely more on the private sector, be it under domestic or foreign ownership, while the state is strongly expected to act simply as the financier for reconstruction projects.

10.3 SIGNIFICANCE AND CONTRIBUTION OF THIS RESEARCH

After presenting the findings of this study, this chapter moves on to the significance and the contribution of this study, which fall within five main areas as follows:

- (i) Although many studies have discussed and analysed the privatisation policy and its effects in numerous countries, very few studies have evaluated the adequacy of the environment or the availability of the necessary requirements for successful privatisation. This study should be considered an important contribution to the existing body of knowledge in this specialized area;
- (ii) This comprehensive study is considered to be the first of its kind in Libya to explore the adequacy of the Libyan financial, economic, administrative and legal environment for efficient privatisation, which identifies its novel yet humble contribution;
- (iii) This study also derives its rationale from the following points in supporting the market economy and, hence, privatisation in Libya. Firstly, there is an urgent need to adopt policies of privatisation and economic transformation in Libya, because of the problems caused by the dominance of the public sector in economic activity for a long time. Secondly, disappointing results of the first wave of privatisation, which was adopted in Libya in the late 1980s, emphasised the urgent need to study the success factors for privatisation in Libya, especially since the Libyan government in the previous administration began privatising large public institutions in vital sectors. Thirdly, many studies and previous international experience concluded that privatisation produced many negative results and did not achieve the desired goals, due to lack of certain conditions and requirements for success. Therefore, this study should be considered as an important contribution for decision-makers for the new regime in Libya in devising their new policies to avoid the negative consequences that may result from the privatisation policy.
- (iv) This study provides primary analysis of the actual situation of the issues relating to privatisation and economic transformation in Libya. This could be

very useful for the purpose of conducting comparative studies on the Libyan economy in the future, or perhaps for studies in other developing or transitional countries.

Having identified the contribution of this study, the next section aims to reflect on the findings in terms of providing some recommendations for policy-makers in order to develop an efficient environment for privatisation.

10.4 RECOMMENDATIONS FOR POLICY-MAKERS

According to the findings of this study, the following recommendations can be made to improve the Libyan business environment in order to implement the privatisation and economic reform efficiently and effectively:

- (i) Issuance of a modern and unified constitution at this stage is essential to protect private property; it should contain the foundational base of a new economic system relying on the private sector and the free market mechanism, and is an essential requirement to remove any ambiguity in restoring private sector confidence in Libya, and to provide proper legitimacy and legal backing to the process of privatisation and the transition to a market economy with the aim of achieving an efficient capitalist economy.
- (ii) It is essential to monitor and oversee the privatisation transactions to achieve the required transparency and avoid any doubt or objection that could halt or hinder the success of the policy, which may also undermine trust to the system. Thus, crony capitalism under neo-corporatism and rentier economy and mentality should be avoided for a modern political economy.
- (iii) The new regime should take into account the problems and shortcomings by addressing the negative social effects of privatisation, especially those relating to workers laid off from public institutions. In this context, it is possible to implement many of the solutions that have been applied successfully in other countries, including early retirement and the payment of compensation to laid-off workers, taking into account the advantages and disadvantages of each method. It should be noted that not efficiently dealing with such matters may

result in social unrest which the new regime must avoid under the social and political upheaval the country is going through.

- (iv) Facilitating the process of entering the market and establishing private sector activities is essential to help resolve the problem of redundancy on the one hand, and to stimulate competition required for a market economy on the other.
- (v) It is vital to reconsider the policy of expansion in creating investment funds and public financial institutions that operate outside the general budget in order to control state finances on the one hand and develop better governance structure through a consolidated budget.
- (vi) Relevant authorities should speed up the creation of a supervisory agency in the stock market, as well as activating the Capital Market Law in order to regulate transactions in the market; this will encourage investment and the transfer of savings, thus contributing to the process of privatisation and stimulating the economy.
- (vii) Speeding up the activation but also legislating of new laws is urgently required to build a legal structure in line with the economic transformation the country will go through under the new regime; these include the Competition Law, which will prevent monopolistic practices and protect consumers in the Libyan market, which also will establish the foundation of a market economy. Moreover, activation of the new Commercial Law is essential for regulating the business environment and building an effective structure of corporate governance that will help to encourage investors and protect the rights of shareholders and stakeholders, as well as providing appropriate conditions to improve the efficiency and performance of private companies.
- (viii) Establishing the required institutions, such as a competition council to impose the competition law, as well as establishing independent agencies for consumer protection, is a crucial development needed for the efficient implementation of the privatisation policies;

- (ix) It is essential that political will and commitment should be provided by the governments and the elite of the new regime. This will require a new political mindset away from retierims, clientilism and patronage networks.

10.5 LIMITATIONS AND FUTURE RESEARCH

While this study aimed to fulfil its aims and objectives and respond to the main research questions in an efficient manner, like any other social science research it is not immune to certain limitations as summarised below:

- (i) This research was initially considered to be based on primary data collected through questionnaires and interviews from Libya. For this, the researcher had developed the questionnaires and interview schedules. However, due to the political upheaval and revolution occurring in Libya in 2011, the fieldwork could not be undertaken. Accordingly, a methodological strategy change was considered in this study, and the secondary data were considered as an option to respond to the research questions. In addition, access to the secondary data, due to the situation in Libya, was not an easy task. However, at the end of 2011, the situation to some degree settled down, thus enabling the researcher to conduct (limited) interviews with a group of specialists and senior government officials to obtain information to support the analysis produced by secondary data obtained in earlier analyses.
- (ii) The above-mentioned circumstances also prevented the researcher from conducting interviews in person, thus electronic means and techniques of communication was utilized in conducting the interviews through a structured interview schedule.
- (iii) As interviews conducted after the political change, responses given likely to be different to those that would have been given prior to 2011. In other words, these answers could be rather influenced by the political conflict and events that occurred in Libya, in 2011, as well as the relaxed political environment provided in the post-revolution period. It should be mentioned, however, responses for many questions were slightly different; as although there was a strong criticism on the performance of the previous regime, several

interviewees stated, in many places, that former Libyan government had developed several positive policies, and took many financial, economic, social and legal measures in order to create a market based economy. The comparison within and between the interviewees responses renders reliability and helps to overcome bias issues, which of course cannot be removed totally due to being social constructed positions.

- (iv) Issues such as the satisfaction of stakeholders, including employees in the public sector institutions, local and foreign investors, and even the general public, are very important for the efficient implementation of privatisation. This, however, requires a questionnaire survey. However, because of the aforementioned circumstances, the researcher was not able to conduct such a survey. Therefore, this may be an important area for additional research.
- (v) After the recent political change, and because of the expected changes in the Libyan economy, it would be very useful to conduct another similar study in the near future to explore and evaluate the adequacy of the financial, economic, administrative and legal environments for the economic transformation, with the possibility of making a comparison with the environment that prevailed during the previous regime, as it is expected that the new regime will introduce essential changes to the Constitution and the operation of the economy.
- (vi) Future research should also consider a structured comparison with similar countries in order to develop a pattern and also locate the differences due to political, legal and institutional differences.
- (vii) A quantitative analysis can be considered to analyse the performance of privatized companies before and after the privatisation as a future research.

10.6 EPILOGUE

This study aimed mainly to explore and evaluate the adequacy and effectiveness of the financial, economic, administrative and legal environments for the efficient implementation of the privatisation programme in Libya. As can be seen from the foundational chapters as well as the empirical chapters, this study has now fulfilled its

aims and objectives and responded to its research questions. Based on the analysis presented so far, this study concludes that, although the governments of the previous regime had taken several measures and policies that can be considered positive steps in this regard, for various reasons there are many problems and shortcomings in the financial, economic, administrative and legal environments in Libya. These require appropriate measures to avoid failure or any negative consequences that could hinder the successful privatisation and economic reform policies, as the new Libyan regime has to succeed in providing a better economic environment.

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